

## Chapter I

# THE CONCEPT OF CRIME

**M**an by nature is a fighting animal hence to think of a crimeless society is a myth. Truly speaking, there is no society without the problem of crime and criminals. The concept of crime is essentially concerned with the social order. It is well known that man's interests are best protected as a member of the community. Everyone owes certain duties to his fellow-men and at the same time has certain rights and privileges which he expects others to ensure for him. This sense of mutual respect and trust for the rights of others regulates the conduct of the members of society *inter se*. Although most people believe in 'live and let-live' policy yet there are a few who for some reason or the other, deviate from this normal behavioural pattern and associate themselves with anti-social elements. This obviously imposes an obligation on the State to maintain normalcy in society. This arduous task of protecting the law abiding citizens and punishing the law breakers vests with the State which performs it through the instrumentality of law. It is for this reason that *Salmond* has defined law as a 'rule of action' regulating the conduct of individuals in society. The conducts which are prohibited by the existing law at a given time and place are known as wrongful acts or crimes whereas those which are permissible under the law are treated as lawful. The wrongdoer committing crime is punished for his guilt under the law of the land.

### **Early concept of crime**

Eversince the dawn of human civilisation crime has been a baffling problem. There is hardly any society which is not beset with the problem of crime. Commenting on this aspect of crime problem, *Emile Durkheim* in his treatise '*crime as a normal phenomenon*' says, "a society composed of persons with angelic qualities would not be free from violations of the norms of that society. In fact, crime is a constant phenomenon changing with the social transformation. He argues that crime is a necessary feature of every society as it is a fundamental condition of social organisation. Different groups have different and often incompatible interests in the society which give rise to conflicts which eventually result in the incidence of crime.

Historically, the concept of crime seems to have always been changing with the variations in social conditions during the evolutionary stages of human society. This can be illustrated by the fact that early English society during 12th and 13th centuries included only those acts as crime which were committed against the State or the religion. Thus, treason, rape and blasphemy were treated as crime whereas 'murder' was not a crime.

Primitive societies did not recognise any distinction between the law of

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1. See Oppenheimer on "Rationale of Punishment".

crime and torts but only knew law of wrongs. Commenting on this point *Fedrick, Pollock and Maitland* observed that the English society prior to tenth century confused crimes with torts because the bond of family was far stronger than that of the community,<sup>1</sup> the injured party and his kindred could avenge the wrong by private vengeance and self-redress. During this period, recourse to legal remedy was considered merely an optional alternative to self-redress. (The wrongdoer was supposed to offer compensation to the person wronged, the quantum of which depended on the extent of the wrong caused and the status of the sufferer. The payment of compensation known as '*bot*' washed away the guilt of the wrongdoer and relegated him to a position as if he had done no wrong.' The early Anglo-Saxon laws contained minutest details of compensation (*bot*) which was payable for different wrongs with a view to helping the person wronged in seeking redress.

However, if *bot* was refused, the law had no other means to enforce its payment. In that event, it was for the victim or his kindred to prosecute a '*blood-feud*' against the wrongdoer and law could help him only by declaring the wrongdoer as an '*outlaw*' who could be chased and killed by anyone like a wild beast.

Besides the offences which could be atoned by *bot* (payment of compensation to the victim) there were certain other wrongs which entailed additional fines (*wite*) payable to the King. That apart, there were certain *botless* offences for which no amount of compensation could wipe out the guilt and the wrongdoer had to undergo punishment. Such cases were punishable with death, mutilation or forfeiture of property to the King. House-breaking, harbouring the outlaws, refusing to serve in the army and breach of peace etc., were some of the early '*botless*' offences which entailed compulsory punishment under the law of the State. As a matter of fact it is from these '*botless*' offences that the modern concept of crime has emerged. The number of '*botless*' offences increased considerably after twelfth century. Thus a distinct line of demarcation could be drawn between the wrongs which could be redressable by payment of compensation (*bot*) and those which were not so redressable by money compensation (*botless*) and for which the wrongdoer was to be punished by the King. In course of time the former came to be known as civil wrongs or 'torts' while the latter as 'crime'. It can, therefore, be observed that the law did not play compelling part in regulating the social relations in early days as it does today. The modern legal systems provide that as soon as an offence is committed, the law is set into motion at once irrespective of the wishes of the injured party, whereas in early societies the law was administered only if both the parties agreed to submit themselves to the verdict.

Another characteristic feature of this period (1000 to 1200 A.D.) in the history of crime was the preponderance of the system of ordeals by fire or by water<sup>2</sup> to establish the guilt or innocence of the accused. This was perhaps

1. Radcliffe & Cross : The English Legal System (1954), p. 6.

2. In the ordeal by fire, the accused was to carry a red-hot iron to a distance of nine feet. Thereafter, his hands were bound up unbandaged. After three days, if the wound was healed up, he was considered to be innocent. In ordeal by water, the accused was bound and lowered in a pool, if he sank a certain distance, he was innocent otherwise he was considered to be guilty and punished.



due to the dominance of religion in early days and superstitions of the people who believed that their social relations were governed by some supernatural power which they regarded omnipotent.

According to *Dharamsastra* writers ordeal was a living institution in India. Epigraphic and legal records show that ordeal was practiced strictly according to the *Dharamsastra* rules since times immemorial in the Indian history. Ancient writers have referred to the ordeals as divine methods with various names such as *Samayakriya*, *Sapatha*, *Divya*, or *Pariksa*. Ordeals were treated as a divine means of proof about guilt or innocence of the accused. The two important aspects of ordeals were : (i) they indicated the divine aspect of trial, and (ii) the basic idea underlying this method of trial was the need of divine intervention at a crucial moment in dispensing justice. Thus ordeal was an antique institution, a deep rooted custom, practised by the people in ancient India. *Yajnavalkya mentions five kinds of ordeals—Balance, Fire, Water, Poison and Kosa.*<sup>1</sup>

In the Balance ordeal, the accused was weighed against a stone and if the latter was lighter, the charge was considered to be false, but if it was otherwise, the charge stood proved.

The fire ordeal consisted of four main forms, namely, (i) going through nine circles with red-hot iron-ball in hand; (ii) walking over burning fire; (iii) lifting up a piece of iron from boiling oil; and (iv) licking the red-hot iron bar with tongue.

In water ordeal, the accused was brought to a deep and rapidly flowing river or a deep well with such water. Then he was to speak to the water; 'since thou belongest to the pure angels and knowest both what is secret and the public, kill me if I lie and angels preserve me if I speak the truth'. Then five men took the accused and threw him into the water. If he was not guilty, he would not drown or die.

The poison ordeal was also used as a method of investigation. The accused was made to eat the poison or take out a living black serpent from a pot. If he survived harmless, he was supposed to be innocent otherwise he would be deemed guilty.

The kosa form of ordeal was the mildest ordeal meant for universal application. The accused was taken to a temple. Then the priest poured water over the deity (idol) and this holy water was given to the accused for drinking. If he was guilty or false, he would at once vomit blood.

The first three ordeals were based on nature and on the principle of divine judgment. They, however, fell into disuse in course of time.

With the march of time, human reasoning improved and the King assumed greater responsibility for apprehending offenders, a duty which was hitherto the sole concern of the injured party. The changes in civilization, culture and advancement of scientific knowledge also brought about a change in the concept of crime which eventually led to the emergence of criminology as an independent branch of knowledge.

1. Dr. Pendse S.N. : Oaths and Ordeals in Dharamsastra (M.S. University, Baroda Publication) p. 24.

## **Eighteenth And Nineteenth Century**

In European countries, particularly in France and Italy, the period of eighteenth century witnessed an era of miraculous reorientation in criminological thinking. The earlier emphasis on crime, the idea that crime was the result of divine displeasure, the superstitions and myths were all abandoned and the study of crime and criminal was started afresh on a scientific basis. It was firmly established that no one else than the offender himself could be attributed criminal responsibility for his crime and the external agencies had nothing to do with it.

Thus it would be seen that the concept of crime is closely related to social policy of a given time. With changes in ideologies the concept of crime also changes. That is to say, certain new crimes spring up whereas some existing crimes become obsolete and, therefore, they are deleted through adequate changes in the criminal law. It is for this reason that the criminal law has often been considered as a barometer to gauge the moral turpitude of the society at a given time. In other words, the social standards of the society can conveniently be judged by studying the criminal policy adopted by it. A few illustrations from the Indian society will support this contention. The legislative measures to legalise abortion in certain cases sufficiently reflect the changing concept of morality in Indian society. More recently, the stringent anti-dowry laws enacted to prevent the incidence of dowry-deaths and bride-burning and deterrent legislation against the practice of *sati* providing for death sentence and fine to those who abet this evil practice in any form, clearly indicate that the society is no longer going to tolerate atrocities against women and desires to assure them a dignified place in the community.

## **Twentieth Century**

There has been considerable increase in crime rate in recent decades. This phenomenon, however, is not peculiar to India alone. The crime-statistics all over the globe have recorded a similar trend. In fact, the incidence of crime in western countries is far greater than that of India, perhaps because of the variance of social conditions in these countries. The factors such as greater control of family over the wards and respect for morality and religion, etc. have acted as effective restraints to reduce the incidence of crime in India. This is wanting in western countries. Generally speaking, the upward trend in crime-rate can be attributed to modernisation, urbanisation, industrialisation, advance of science and technology and growth of civilization, and advent of materialism. With economic growth, people's craze for wealth and other luxuries of life has increased beyond limits which cannot be quenched with the available resources. Obviously, persons who cannot resist their temptations too often resort to unlawful means to meet their ulterior motives. Scientific know-how has proved a boon to offenders in carrying out their criminal activities with considerable ease. They have provided better opportunities for escape and avoid detection which has mitigated the risk involved in committing crimes.

Today's Hi-tech world and use of computer network has given rise to cyber crimes and other computer related unlawful activities. Cyber crimes are harmful acts committed for or against a computer or against information



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on computer network. These crimes differ from most terrestrial crimes in four ways. Firstly, it is easy to learn how to commit them, secondly, they hardly require any resources, thirdly, they can be committed in a jurisdiction without being physically present in it, and fourthly, they are often not clearly illegal. Undeterred by the prospect of arrest or prosecution, the cyber criminals operate around the computer network and thus are a menace to E-mail or E-commerce users. These cyber crimes cover a wide range of illegal activities which include frauds, hackers, viruses, pornography, harassment, stalking, data-diddling etc. These offences call for need to recognise the fact that criminal law must continue to evolve if it is to address itself adequately to new developments in information technology. Because of the cyber crimes' international potential, there is need for an effective anti-cyber space international law for preventing cyber-crimes.<sup>1</sup>

These developments necessitate a fresh approach to crime and criminals so as to cope with the new situations and keep crimes well within control.

*Term of*  
That apart, social change, which is inevitable in a dynamic society, has resulted in disharmony, conflict and cultural deviations. On the whole, social disorganization has taken place and the traditional patterns of social control mechanism have totally broken down. In the wake of such rapid social transformation, the incidence of crime has gone up tremendously in urban areas, particularly in big cities. The heterogeneity of the Indian life has destroyed the earlier congenial social complex of the society creating fertile ground for criminality. The criminalisation of Indian politics<sup>2</sup> in recent years has made the crime situation still worse as evinced by scams, corrupt practices, bomb-blasts, sex-scandals and all sorts of violent activities.

### **Crime defined**

A precise definition of 'crime' is by no means an easy task. Generally speaking, almost all societies have certain norms, beliefs, customs and traditions which are implicitly accepted by its members as conducive to their well-being and healthy allround development. Infringement of these cherished norms and customs is condemned as anti-social behaviour. (Thus many writers have defined 'crime' as an anti-social, immoral or sinful behaviour.) However, (according to the legal definition, 'crime' is any form of conduct which is declared to be socially harmful in a State and as such forbidden by law under pain of some punishment). Therefore, Tappan has

1. Rekha Balu's article on Cyber Crime published in Futurist, dated Jan. 17, 2001.
2. The issue of nexus between criminals and political functionaries or government high ups was highlighted in the N.N. Vohra Report which was tabled in the House of Parliament on 2nd August, 1995. The assassination of trade union Leader Shanker Guha in 1992 and the 'Naina Sahani Murder Case' of 2nd July 1995 are some of the recent instances of criminalisation of Indian politics. Acting promptly, the Madhya Pradesh Government appointed one-man 'G.G. Sohani Commission' on 7th August, 1995 to investigate into criminal links between politicians and the criminals. The gruesome murder of the President of Sagar District Congress (I) Women Wing Smt. Sushma Singh in June 1995 by her husband Mahendra Singh who was an influential Socialist Party leader of Madhya Pradesh is yet another example of criminalisation of political leaders. The sitting Member of Parliament from Madhepur, Bihar, Pappu Yadav who allegedly murdered C.P.M. legislator, Ajit Sarkar in 1998 is presently under trial.

defined crime as, "an intentional act or omission in violation of criminal law, committed without any defence or justification and penalised by the law as felony or misdemeanour."<sup>1</sup>

According to *Kenny*, "crimes are wrongs whose sanction is punitive, and is in no way remissible by any private person, but is remissible by the Crown alone, if remissible at all". But this definition has evoked criticism on the ground that there are indeed a number of compoundable offences that are remissible by the consent of the parties.

Expressing his views on definition of crime, *Roscoe Pound* commented that "a final definition of crime is impossible, because law is a living and changing thing, which may at one time be based on sovereign will and at another time on juristic science, which may at one time be uniform, and at another time give much room for judicial discretion, which may at one time be more specific in its prescription and at another time much more general."

*Cross & Jones* define crime as a legal wrong the remedy for which is punishment of the offender at the instance of the State. — *हत्या/चोर/दोष*

*John Gillin* defines crime as an act that has been shown to be actually harmful to the society, or that is believed to be socially harmful by a group of people that has power to enforce its beliefs and that places such act upon the ban of positive penalties. Thus he considers crime as an offence against the law of the land.<sup>2</sup>

(According to *Blackstone*, a crime is an act committed or omitted, in violation of a public law either forbidding or commanding it.<sup>3</sup>) He, however, realised at a later stage that this definition may prove to be misleading because it limits the scope of crime to violations of a 'public law' which normally covers political offences such as offences against the State. Therefore, he modified his definition of crime and stated, "a crime is a violation of the 'public rights and duties' due to the whole community, considered as a community."

*Stephen*, the editor of *Blackstone's* commentaries, further modified the above definition and said, "a crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large."

Thus both, *Blackstone* and *Stephen* stress that crimes are breaches of 'those laws which injure the community'. *Stephen* further added that "crime is an act which is both forbidden by law and revolting to the moral sentiments of the society."

Rejecting this juridical concept of crime, the well known Italian criminologist *Raffaele Garofalo* preferred sociological definition of crime and stated that crime is an act which offends the basic sentiments of 'pity' and 'probity'. Yet another view about crime is to treat it as an anti-social behaviour which is injurious to society.

Supporting this contention *Sutherland* characterises crime as a symptom of social disorganization. The tendency of modern sociological penologists is, therefore, to treat crime as a social phenomenon which

1. Tappan Paul W : Crime, Justice & Correction, p. 80.
2. Gillin J.L. : Criminology & Penology, 3rd Ed., p. 6.
3. William Blackstone : Commentaries, Vol. IV, p. 5.



receives disapprobation of the society.

✓ In the words of *Donald Taft*, "crime is a social injury and an expression of subjective opinion varying in time and place".

✓ *Halsbury* defines crime as an unlawful act which is an offence against the public and the perpetrator of that act is liable to legal punishment.

From the foregoing definitions, it may be said that a crime is a wrong to society involving the breach of a legal wrong which has criminal consequences attached to it *i.e.* prosecution by the State in the criminal court and the possibility of punishment being imposed on the wrongdoer.

It is significant to note that though the legal definition of crime has been criticised because of its relativity and variable content yet *Halsbury's* definition is perhaps the most acceptable one as compared with other definitions because of its elaborate and specific nature and element of certainty. Further, it also provides for the machinery and procedure to determine the violations and to identify the offenders.

### Crime without a Victim

There are certain offences which though punishable under the law, do not have any direct harm on others. Such offences may be termed as *victimless crime*. For example, drunkenness and related offences, sale and use of prohibited substances, vagrancy, begging, soliciting, homosexuality, bestiality etc. do not cause any harm to any person and hence they may be categorised as victimless crime. It may be stated that legality or illegality of such crimes depends mostly upon the morality and economic interests of the community. It is mainly for this reason that many of these activities are decriminalised and taken out from the purview of criminal law. Thus, drunkenness and homosexuality are decriminalised in U.K. and many other European countries when not committed in a public place. The justification advanced for decriminalisation of these offences is that use of non-criminal methods such as social service programmes etc. to help drug addicts or drug-traffickers or homosexuals would perhaps be more helpful than the use of criminal law to control their behaviour.

### Classification of Crimes

The existence of crime in a society is a challenge to its members due to its deleterious effect on the ordered social growth. In fact, it leads to a colossal waste of human energy and an enormous economic loss. Therefore, with the advance in the field of criminology and behavioural sciences, efforts are being constantly made to work out a commonly acceptable classification of crimes and criminals for providing a rational basis of punishment for various categories of offenders.

⌒ There are a variety of crimes such as violent personal crimes, occasional property crimes, occupational crimes, political crimes, public-order crimes, conventional crimes, organised crimes, professional crimes, white collar crimes, sexual crimes, crimes against property, person, decency, public order etc. Broadly speaking, these may be categorised into three heads, namely, (i) offences falling under Code of Criminal Procedure; (ii) offences under Indian Penal Code; and (iii) offences under local or special laws or enactments.

Some writers have preferred to classify crimes into legal, political, economic, social and miscellaneous crimes.

1. Legal crimes can be termed as traditional crimes such as theft, robbery, dacoity, rape, hurt and rioting etc.
2. Political offences are those which are motivated politically or committed in violation of the election laws or norms set out for the politicians in course of their political activities.
3. Economic crimes include white collar offences such as tax evasion, smuggling, prostitution, gambling, foreign exchange violations, offences under the MRTP (Amendment) Act, 1991 etc.
4. Social crimes are those which are committed under social legislation such as the Child Marriage Restraint Act, 1978; Protection of Civil Rights Act, 1955; Immoral Traffic (Prevention) Act, 1956; Indecent Representation of Women (Prohibition) Act, 1986; Commission of Sati (Prevention) Act, 1987; The Dowry Prohibition Act, 1961 as amended in 1983 and 1986; Juvenile Justice (Care and Protection of Children) Act, 2000; Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 etc.
5. All other remaining crimes which are committed under local or special Acts, are termed as miscellaneous crimes, for example, offences under the Prevention of Food Adulteration Act, 1954; Drugs Act, 1940; Consumer's Protection Act, 1986; Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 etc.

### Classification of offences under I.P.C.

Under the Indian Penal Code, various offences have been classified into seven broad categories on statistical basis. They are :—

1. Offences against person.
2. Offences against property.
3. Offences relating to documents.
4. Offences affecting mental order.
5. Offences against public tranquillity.
6. Offences against State.
7. Offences relating to public servants.

This classification seems to be more rational and elaborate from the point of view of administration of criminal law and penal justice.

### Characteristics of Crime

There are certain characteristics of a crime which make an unlawful act or omission punishable under the law of the land. The main characteristics of a crime are as follows :—

(1) **External consequences.**—Crimes always have a harmful impact on society may it be social, personal, emotional or mental.

(2) **Act (Actus Reus).**—There should be an act or omission to constitute a crime. Intention or *mens-rea* alone shall not constitute a crime



unless it is followed by some external act.) Generally, omitting to do something will not amount to *actus reus* of an offence. The criminal law usually punishes individuals for positive conduct and not for inaction. There are, however, some notable exceptions. For example, a police officer may have a duty to act to prevent an assault and if he does not, he will be liable to be punished under the law.

(3) **Mens-rea or guilty mind.**—*Mens-rea* is one of the essential ingredients of a crime. It may, however, be direct or implied. The implied *mens-rea* is otherwise termed as constructive *mens-rea*.<sup>1</sup>

*Mens rea* implies that there must be a state of mind with respect to an *actus reus*, that is, an intention to act in the proscribed fashion. It is, however, important to distinguish *mens rea* from motive. Thus if a person steals away a few loaves of bread from someone's kitchen to feed a child who is dying of hunger, the motive here may be honourable and understandable, nevertheless the *mens rea* being to commit the theft, the person would be convicted for theft. His motive may, however, be taken into account in sentencing and he may be less severely punished because of his good motive. In short, motive should be taken into consideration at the sentencing stage and not at the time of deciding the question of *mens rea*.

(4) **Prohibited act.**—The act should be prohibited or forbidden under the existing penal law. An act, howsoever immoral, shall not be an offence unless it is prohibited by law of the land.

(5) **Punishment.**—The act, in order to constitute a crime should not only be prohibited by the law but should also be punishable by the State. The punishment is usually set out in terms of a maximum and the actual punishment in any particular case is left to the discretion of the judge. Both, the defence and the prosecution have a right to appeal against the quantum of sentence.

### Sin and Crime Distinguished

Though there is some kind of semblance between sin and crime, the two radically differ in their content, scope and consequences.

ates The concept of sin emanates from religion whereas crime is a legal proposition. Sin results in violation of rules of religion or morality while crime involves breach of law. A sinner is punished by God but a criminal is punished by the State. There is no direct injury or harm in case of a sin but a crime necessarily involves some kind of direct injury. The remedy for a sin is penance whereas a person who commits a crime is subjected to a term of sentence by the law court.

### Crime and Morality

The word 'crime' is derived from the latin word 'krimos' which means 'to accuse'. It covers those acts which are against social order and deserve disapprobation and condemnation of society.

Linking crime with morality, *Garafalo*, an eminent Italian criminologist

1. The maxim '*actus non facit reum nisi mens sit rea*' means that an act alone does not constitute a crime unless it is accompanied by guilty intention. The doctrine had been discussed elaborately by Will, J. in *Tolson's Case* (1869) 23 QBD 168.

observed that "crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community."<sup>1</sup>

The perception of crime as an immoral act had its roots in the medieval legal system when laws were mostly based on religious precepts and the State was subordinated to the Temporal power. The Penal Code was considered as a body of ethical rules making all immoral acts punishable. But with the change in time and advance of legal science, the social norms too have radically changed. Therefore, now a crime is defined as an act forbidden and punishable by law and it is immaterial whether such an act is moral or immoral from the ethical point of view. No doubt, most of the immoral acts which were traditionally considered as crime are treated as crime even today, but there are a number of conducts which though immoral are not considered as crime. For example, ingratitude, callous disregard for sufferings of others, hard-heartedness etc. are not regarded as crime though they are against morality. It would be pertinent to quote the observations made by the authors of the Indian Penal Code in this regard :—

"Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be far worse than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness."<sup>2</sup>

It would, therefore be seen that if the social expediency along with some other factors which makes an act a 'crime' it is not material whether that act is moral or immoral.

## Conclusion

It must be stated that recent developments in the field of psychology, sociology and other behavioural sciences have brought in their wake a corresponding change in the criminological trends and opened new vistas in comprehension of human behaviour. It has been generally accepted that crime is a product of various factors which cannot always be explained on the basis of hedonistic calculus of pain and pleasure as propounded by *Bentham*. There is need to control criminogenic influences by improvised correctional techniques so as to bring out resocialisation and reformation of the offenders.

Summing up the following generalisations regarding the concept of crime may prove useful in comprehending the subsequent developments in the field of criminology and penology.

- (1) Crime and social policy are inter-related and the concept of crime and punishment depends largely on the social values, accepted norms and behavioural patterns of a particular society at a given

1. *Garafalo* : Criminology, (1914) p. 59.

2. Draft Penal Code p. 174.



- time.
- (2) Like the society, crimes are also a varying content changing with the changes in social structure. What is crime today may become a permissible conduct tomorrow and *vice versa*. For example, abortion which was considered to be a heinous crime because of the immorality involved in it is no longer an offence under certain circumstances consequent to the enactment of law legalising abortion.<sup>1</sup>
  - (3) Crime is a relative term, therefore, what is wrongful (crime) at one place may not be necessarily so in another place. Thus adultery is a criminal offence in India but in England it is merely a civil wrong redressible by payment of compensation. Again, in India consuming liquor is an offence in many States under their respective prohibition laws but it is not so in wet areas where there is no licensing on sale of liquor. This relativity of crime obviously reflects upon the varying social reactions to human conduct in different places.
  - (4) The moral tune of the society can easily be gauged from the law of crimes enforced in that society at a given time. This, in other words means that criminal law is an index of social progress of a given society.
  - (5) The emergence of law of crime and criminological knowledge has been through a definite process of evolution corresponding to different phases of social evolution.
  - (6) The modern complexities of human life have contributed to the rising incidence of crime. But there is nothing to be perturbed about this rising trend in criminality. In fact, it is a myth to think of a crimeless society. Modern criminologists have even gone to the extent of reckoning increase in crime as a symptom of social progress.
  - (7) With the passage of time, the emphasis has shifted from 'crime' to 'criminal'. The modern view regarding penal policy favours individualisation of the offender through clinical treatment-methods. This has led to the emergence of reformatory era in the field of penology thus rendering the earlier deterrent, retributive and retaliatory methods completely obsolete and outdated.

It is true that modern criminology owes its origin to the European criminologists such as *Beccaria*, *Ferri*, *Garafalo*, *Tarde* and others but this does not mean that the knowledge of criminal science was completely unknown to ancient India. The Indian epics and other authoritative sources such as *Manusmriti*, *Nyaya Mimansa* and *Kautilya's Arthshastra* contain exhaustive references to crimes and criminals which clearly indicate that a well-defined criminal policy was in vogue in early period of Hindu society.<sup>2</sup> The most striking feature of the penal law of ancient India was that it used religion and morality as the basis of determining what was criminal and

1. The Medical Termination of Pregnancy Act, 1971.

2. Sen, P.K. : Penology : Old & New (1943), pp. 101-107.

what was not. People in ancient India showed greater respect for religion, morality, ethical values and law ; the social solidarity of the community kept people conscious about their duties towards their fellowmen. The occurrence of crime was, therefore, a rare phenomenon. Moreover, the fear of caste expulsion acted as an effective social deterrent to keep persons away from criminality. It was far more humiliating and disgraceful than actual corporal punishment.

Later, with the socio-political changes due to advent of Moghul and English rule in this country, the Indian society witnessed a radical change. Due to the impact of western culture, the past traditions and ethical values of life have lost all their significance and there has been a drift into excessive materialism which has created an atmosphere conducive to multiplicity of crimes. India's criminal policy, penal laws and procedural laws, are all modelled on British criminal justice system. It is, therefore, difficult to link up the ancient penal laws of India with the present law of crime and procedure.

It must, however, be emphasised that the crime and its related concepts being the subject-matter of criminology, are essentially concerned with human behaviour. Since human behaviour cannot be defined in exact terms, opinions as to the criminological views are bound to differ. This is evident from the fact that certain criminologists treat criminal as a socially deviated person while others consider him as a victim of his circumstances who needs humanitarian consideration. There are yet a few others who treat offenders as a positive menace for the community and therefore insist on their elimination from the society through prisonisation. Whatever may be the means adopted for handling criminals, the ultimate object remains more or less the same, namely, eradication of crimes from society and rehabilitation of offenders as law-abiding members of the community. Reformation of criminals through clinical approach has been accepted as the cardinal principle of modern penology. It is for this reason that reformation of criminals through modern clinical techniques has been acknowledged as the ultimate object of modern penal justice. It is through this method that rehabilitation of offenders in the community is possible so as to eliminate crimes and criminals from the society. Therefore, conventional methods of sentencing and incarceration are rapidly falling into disuse and are being increasingly replaced by modern corrective measures such as probation, parole and indeterminate sentence. The philosophy underlying these reformative techniques is rehabilitation of offenders through the method of individualisation.

While planning out a strategy for crime prevention, it must be borne in mind that human nature is complex and no one can possibly comprehend it fully. It has, however, been realised that all human beings do not respond to a given situation in the similar manner because of their varying socio-economic, psychological and environmental ramifications. It, therefore, follows that all the offenders cannot be treated alike. This necessitated the shift of emphasis on the role of prisons from mere custodial institutions to those treatment and training centres for those who indulge in law violation. Thus treatment methods help in the resocialisation of prisoners and enable their adjustment to healthy life patterns and improved inter-personal



relationships. After-care services also help in the rehabilitation of the relegated offenders.

The modern progressive penology which *Manuel Lopez Rey* prefers to call as 'applied penology' centers round three main aspects of penal justice, namely, custody, security and control of offenders through institutional treatment.<sup>1</sup> Its main purpose is to ascertain the adequacy of existing penological policies and institutions and offer solutions towards the improvement in the functioning of the existing machinery of penal justice. This continuous analytical activity prevents penal system from being wedded to a particular school of thought and enables it to appreciate the general context of socio-economic and political values such as custodial rights, human rights etc. Psychotherapists believe that analytical treatment of criminals over a period of years may bring about profound changes in their personality and they may respond favourably to accept their social responsibilities.

Besides the preventive measures, there is also need to recognise the plight of victims of crime by both, the criminal justice system giving them the respect they deserve and by society providing the social support which they may need. This will infuse confidence among them and they would cooperate with the police and other investigation authorities in giving evidence etc.

The control of crime to be successfully tackled needs to be addressed from all sides. Mere policing would not yield the desired results unless followed by community involvement, support from victims and changing deep-rooted attitudes like relative deprivation by providing jobs, housing and other community facilities to the deprived sections of society.<sup>2</sup>

All these factors have a bearing on criminality and, therefore, have to be taken into consideration for the prevention of crime and criminals.

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1. Manuel Lopez Rey : Studies in Analytical Penology (1964) p. 138.

2. Katherine, S. Williams : Text Book on Criminology (1st Indian Reprint 2001), p. 478.

## NATURE AND SCOPE OF CRIMINOLOGY → অপরাধ বিজ্ঞান

**E**nrico Ferri, the noted Italian criminologist, once observed that most of the progressive countries today are engaged in safeguarding the interests of their people by adopting a criminal policy which can best protect the society from crime and criminals. Obviously, the success in eliminating crimes from society which is otherwise known as *Social Defence*, largely depends on the efficacy of criminal law administered in a particular country. That is the reason why past few decades have witnessed revolutionary changes in criminological thinking and frequent shifting of criminal policies. Modern criminologists are engaged in working out a common penal programme which could be uniformly acceptable to all countries of the world. The ultimate object is to minimise incidence of crime by an effective administration of criminal justice through agencies such as the court, police, prison, reformatories and other modern penal institutions.

The problem of crime control essentially involves the need for a study of the forces operating behind the incidence of crime and a variety of co-related factors influencing the personality of the offender. This has eventually led to development of modern criminology during the preceding two centuries. The purpose of study of this branch of knowledge is to analyse different aspects of crime and devise effective measures for treatment of criminals to bring about their resocialisation and rehabilitation in the community. Thus criminology as a branch of knowledge has a practical utility insofar as it aims at bringing about the welfare of community as a whole. The principles of criminology serve as effective guidelines for formulation of penal policy. The modern clinical methods and the reformatory measures such as probation, parole, indeterminate sentence, open prisons and other correctional institutions are essentially an outcome of intensive criminological researches during the twentieth century. These measures have sufficiently demonstrated the futility of dumping offenders inside the prison-cells and infliction of barbaric punishments. *Prof. Gillin* has aptly observed that it is not the humanity within the criminal but the criminality within the human being which needs to be curbed through effective administration of criminal justice. More recently, criminologists and penologists seem to have agreed that "individualisation of the offender should be the ultimate object of punishment while treatment methods, the means to attain this end". The study of crime and criminal must proceed on a scientific basis by carefully analysing various aspects associated therewith and must necessarily suggest measures proposed to suppress criminality. It must be added that with new crimes emerging in modern complexities of life, we seem increasingly concerned about the problem of crime. Today



- ① Theoretical / pure  
② Applied.

destructive acts of vandalism, highway, train and bank robberies, looting, bomb blasts, rape, illegitimate terrorist activities, white-collar crimes, criminalisation of politics, hijacking, etc., are constantly increasing which have posed a positive danger to human life, liberty and property. Modern criminologists, therefore, seem to be seriously concerned with the problem of crime to protect the society from such anti-social activities of criminals. It is for this reason that the two sister branches of criminal science, namely, criminology and penology, should work hand in hand to appreciate the problem of criminality in its proper perspective. This aspect has been elaborately discussed in the subsequent chapters of this book.

### **Criminology—Its Nature and Scope**

Broadly speaking, criminology deals with the legal psychiatric aspect or the medico-psychological, biological, pedagogical or sociological aspect of criminality and the factors related therewith.<sup>1</sup> It, therefore, follows that criminology and criminal policy are interdependent and mutually support one another. Thus, criminology seeks to study the phenomenon of criminality in its entirety. The science of criminology may further be split into two, namely, (1) theoretical or pure criminology ; and (2) applied or practical criminology.

Prof. W.A. Bonger preferred to study theoretical criminology under the following sub-heads :—

(1) **Criminal Anthropology.**—It seeks to understand the personality of the offenders in physical terms. Cesare Lombroso was the first to propound this view which eventually led to the origin of modern criminology. He was first in point of time to explain criminal behaviour in terms of physical-characteristics of the offender and emphasised that (criminals were different physically from normal persons and possessed inferior physical characteristics.) (Though this view is no longer supported by modern criminologists, but it does have its theoretical importance.)

(2) **Criminal Sociology.**—It is based on Sutherland's theory of 'differential association' which explains criminal behaviour as a process of learning through association with other criminals. This theory, however, does not adequately take into account the personality traits or psychological variables in criminal behaviour.

(3) **Criminal Psychology.**—It seeks to co-relate criminality to emotional aspect of human nature. French psychologist Alfred Binet and Professor Jernan of USA are the main propounders of this view. Dr. Arnold and Dr. E.A. Hooton carried further researches on this aspect of criminal behaviour.

(4) **Criminal Psycho-neuro-pathology.**—This branch of criminology attributes criminality to functional deviations and mental conflicts in the personality of the offender. The factors such as inferiority complex, frustration, depression, anxiety etc. may lead a person to commit crimes. Dr. Glueck and Freud are the main exponents of this view.

(5) **Penology.**—It concerns itself with the various aspects of punishments and penal policies. The various mechanisms of punishing the

1. Dr. Stephen Hurt Witz : Criminology (1948) p. 427.

Penology - अभियन्तृ

offenders are also studied under penology.

Applied criminology, on the other hand, includes the study of criminal hygiene and criminal policy which is founded on solid derivative conclusions.

Besides these two, there is yet another branch of criminology called criminalistics which connotes the police-techniques of crime investigation and detection. It provides very useful material for study and understanding of criminal justice administration from the point of view of field officers whose main pre-occupation is to deal with the law and procedure relating to investigation and prosecution of criminal cases.

*Dr. Kenny* opines that criminology is a branch of criminal science which deals with crime-causation, analysis and prevention of crimes.

Criminology as a branch of knowledge is concerned with those particular conducts of human behaviour which are prohibited by society. It is, therefore, a socio-legal study which seeks to discover the causes of criminality and suggests remedies to reduce crimes. Sociologists, however, differ in their view about criminology. In their opinion, every anti-social act emanates from some criminogenic tendency which needs to be cured by society. Thus, they attempt to correlate the concept of crime with other sociological and environmental factors. However, judicial approach to criminology suggests that an act to become a crime must conform to two cardinal principles of criminal liability, namely :—

- (i) *Nullum crimen sine lege,*
- (ii) *Nulla poena sine lege.*

According to the first principle, no one is held criminally liable unless he has done an act which is expressly forbidden under the existing criminal law of the land and has a reprehensible state of mind to do it. The second principle suggests that no one can be punished for an act unless it is made punishable under the law. Thus it is doubtful whether a swimmer who keeps on watching a child drowning in a pond but makes no effort to save the life, can be punished under the criminal law for his omission to rescue the child.

As stated earlier, a universally acceptable definition of criminology seems to be rather difficult. Criminologists have always differed in their views about approach to this subject. Legalistic approach to criminology is altogether different from that of sociologists, psychologists, biologists or economists. Legalists tackle the issue from the criminality standpoint though they cannot afford to completely overlook its sociological aspect because crime is a conduct of human behaviour in society which is prohibited by law, breach of which entails punishment and is essentially concerned with society as such.

Some authorities suggest that criminology deals with the discursal study of all anti-social acts which are disapproved by the society. But it may be pointed out that the term 'anti-social' itself is very comprehensive and wide in its scope. There are several conditions which may ultimately contribute to the incidence of crime. In case of juvenile delinquency, a child left without proper care and attention is often not able to adjust himself to the accepted norms of society. It is, therefore, the concern of a sociologist to find out as to what conditions or factors have really contributed to the delinquent nature of the child. Here again, purely sociological approach shall



not serve the desired purpose unless other personality traits of the delinquent are also taken into consideration to determine his guilt.

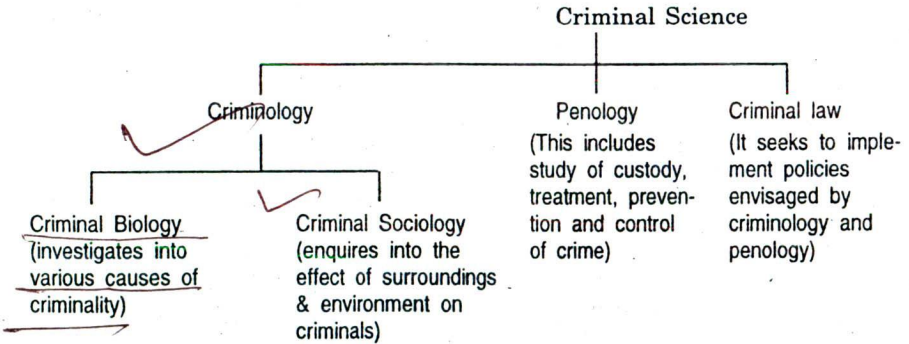
It was once believed that some persons inherit devilish tendencies by birth. They were, therefore, known as born criminals or criminals by nature and were considered incorrigibles. The only way to keep them off was their complete elimination from the society. Later, in the middle of the 18th century *Beccaria*, the pioneer of modern criminology advocated his classical theory of criminal behaviour which was founded on 'free will' of the individual. Through a series of systematic researches he successfully exploded the theory of *born criminals* and established that everyone is master of his ownself and is free to act what he wants. Thus a man resorts to criminal act out of his intelligence and *free will*; *Beccaria's* free will theory was, however, subsequently challenged by positivists, notably *Lombroso* and *Tarde* who suggested that man is not self-determining agent free to act as he desires but is fundamentally a biological organism. It is, therefore, the biological consideration which determines his acts and behaviour. Every person, as a biological creature tries to adjust himself to social environment. It is with this pre-supposition that sociologists precipitated the theory of '*Differential Association*' by correlating crime to environment. With the advance of knowledge and development of criminal science, it was gradually realised that no one is a born criminal but it is the circumstances that make him so; not because he wants to be a criminal but he is rather forced to lend into criminality. Now the sociologists have started gauging with microscopic eyes the real cause of crime which may be etiological, psychological, economic, political, cultural or social. Thus it cannot be denied that environment plays a vital role in crime-causation. To illustrate the point further it may be mentioned that industrialisation has led to disintegration of joint-family system which in turn has given impetus to women employment and this has finally slackened the control of parents over their wards. Consequently, there has been considerable increase in juvenile delinquency in recent years. The liberalised legislation on divorce and legalising abortion in certain cases has led to multiplicity of sex offences. The unethical political activities during the post independence era have led to enormous political crimes. More recently, criminalisation of Indian politics has reached alarming dimensions leading to incidents of violence including rape, murders, mass-killings, etc. White-collar crimes such as hoarding, smuggling, black-marketing, monopolies, etc. have virtually paralysed India's economic stability. In short, the problem of crime has assumed new dimensions and needs to be tackled effectively. It is for this reason that noted criminologist *Donald Taft* has rightly pointed out that criminology is behavioural science dealing with those actions of the individual which do not have the approbation of society. *Prof. Sutherland* characterised crime as a symptom of social disorganisation. In his view, just as the pain in human body is the notification of disorganisation of some organ of the human body, so is the crime with society. Thus sociologically 'crime' is a symptom of maladjustment in the society. Considered from this standpoint, it is no exaggeration to say that workers' strikes are moral-holidays for them.

It shall, however, be erroneous to think that the scope of criminology is

confined only to the integrated theory of crime causation and the policies of crime-control. It also takes note of certain non-criminal behaviours within the purview of its study. For example, investigation into the causes of juvenile delinquents reveals that they lend into delinquency because their energies are not properly channelised. Thus, modern criminologists are more realistic in their approach than their predecessors. They lay greater emphasis on multiple-causation because they are convinced that crime is a social phenomenon, the political society reacting to it through punishment, treatment or preventive measures and this sequence of interaction is the ultimate object of criminology.

### Inter-Relation between Criminology, Penology and Criminal Law

It must be reiterated that criminology is one of the branches of criminal science which is concerned with social study of crimes and criminal behaviour. It aims at discovering the causes of criminality and effective measures to combat crimes. It also deals with the custody, treatment, prevention and control of crimes which, for the purposes of this study, is termed as penology. The criminal policies postulated by these twin sister branches (i.e., criminology and penology) are implemented through the agency of criminal law. Thus, for the sake of convenient study the entire subject may be classified under the following heads :—



It is generally said that criminal law is an index of civilisation because it is sensitive to the changes in social structure and reflects mental fibre of a given society. This is why *Prof. Friedman* calls it a barometer of moral thinking. According to *Wechster*, "crime is a formal social condemnation of forbidden conduct buttressed by sanction calculated to prevent it". Criminologists are thus confronted with three major problems, namely :—

- (1) What conducts should be forbidden and an inquiry into the effect of environment on these conducts ;
- (2) What condemnation is appropriate in such cases ; and
- (3) What kinds of sanctions are best to prevent these conducts.

It is thus evident that criminology, penology and criminal law are inter-related and one cannot really function without the other. The formulation of criminal policy essentially depends on crime causation and



factors correlated therewith while its implementation is achieved through the instrumentality of criminal law. It has been rightly observed by *Prof. Sellin* that the object of criminology is to study the sequence of law-making, law-breaking and reaction to law breaking from the point of view of the efficacy of law as a method of control. According to *Donald Taft*, criminology is the scientific analysis and observation of crimes and criminals whereas penology is concerned with the punishment and treatment of offenders. In his view, the development of criminology has been much later than that of penology because in early periods the emphasis was on treatment of criminals rather than scientific investigation into the causation of crime.

### **Criminal Law—Its Nature and Elements :**

The importance of criminal law in relation to crime need hardly be emphasised. *Dr. Allen* has defined law as something more than a mere command. He observed : "it is the force of public opinion which attempts to enforce, as far as possible, good morals for the benefit of the society and its members". *Marett* views law as the authoritative regulation of social relation. It, therefore, follows that law is a relative term and pervasive in nature. In other words, it is a varying concept which changes from society to society and time to time. The divergence between the Hindu and Mohammedan personal law of marriage, divorce, succession, legitimacy and legislation on prohibition, abortion,<sup>1</sup> COFEPOSA,<sup>2</sup> etc., can be cited in support of this contention. Thus, the criminal law of a place can be defined as the body of special rules regulating human conduct promulgated by State and uniformly applicable to all classes to which it refers and is enforced by punishment. It should, however, be noted that law is simply a means to an end and should not be treated as an end in itself. Its ultimate object is to secure maximum good of the community.

~~In order to be effective, criminal law must have four important elements viz., (i) politicality, (ii) specificity, (iii) uniformity, and (iv) penal sanction.~~ Politicality implies that only the violation of rules made by the State are regarded as crime. Specificity of criminal law connotes that it strictly defines the act to be treated as crime. In other words, the provisions of criminal law should be stated in specific terms. Uniformity of criminal law suggests its uniform application throughout the country without any discrimination, thus imparting even-handed justice to all alike. The purpose is to eliminate judicial discretion in the administration of criminal law. It must, however, be noted that recent legislations are providing scope for more and more judicial discretion through judicial equity to attain offender's reformation which is the ultimate goal of criminal justice. Finally, it is through penal sanctions imposed under the criminal law that the members of society are deterred from committing crime. No law can possibly be effective without adequate penal sanctions.

### **Perception of Criminal Law in Ancient India**

In primitive society in ancient India the administration of justice was the concern of the common people through their various associations such as

<sup>1</sup> Medical Termination of Pregnancy Act, 1971.

<sup>2</sup> Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974.

*Kula, Sreni, Guilds* etc. The King was not involved in the administration of justice at that time. It was the *Dharma Sutras* in which it was mentioned for the first time that administration of justice was one of the primary functions of the King.<sup>1</sup>

The *Manu's* comprehensive Code which contained not only ordinances relating to law, but a complete digest of the prevailing religious precepts, legal philosophy, customs, usages etc. He in his criminal law seems to have recognised assault, theft, robbery, breach of trust, false evidence, slander, adultery, homicide, libel, gambling etc. as crimes. These were the principal offences against persons and property which were recognised under the ancient Indian criminal law. The gravity of the offence, however, varied with the caste and creed of the offender and so was the sentence as well. The Brahmins were treated with exceptional leniency in matter of punishment.<sup>2</sup>

The ancient criminal law in India did not recognise the distinction between public and private wrongs. Murder and homicides were regarded as private wrongs. The right to claim compensation from the wrong-doer was generally accepted. A distinction was, however, made between casual offenders and habitual criminals. Again, provisions for exemption from criminal liability existed where the act was done in self-defence, without intention or by mistake of fact or by consent or it was a result of an accident which are now incorporated in the Indian Penal Code as General Exceptions.

Criminal law as found in *Manu's* Code prevailed in India till the Mohammedan rule was established. The administration of criminal justice was entrusted to *Kazis* under Mohammedan rulers. It provided punishment in the form of *Kisa* or retaliation, *Diyut* or blood money, *Hadd* or fixed punishment, and *Tazir* or *Syasa* which meant exemplary punishment. The notions of *Kazis*, however, varied according to the power of culprits, hence the law lacked uniformity. In general, the criminal justice administration suffered from many inherent defects during Muslim rule in India.

After the British rule in India, efforts were made to introduce a uniform Code of penal laws as a result of which the Indian Penal Code, 1860 was passed which came into force on 1st January, 1862 replacing all earlier rules and regulations on criminal law that existed in British India. It is still the law of the land even to this day.

### **Fundamentals of Modern Criminal Law**

The fundamental principles of criminal law are founded on rules of equity, justice and fair play. These rules provide adequate guidelines for the formulation of a rational penal policy and at the same time ensure even-handed dispensation of justice to litigants.

The fundamental principles governing criminal law administration may briefly be summarised as follows :—

(1) An 'act' in order to become a crime must be committed with criminal intent which is legally termed as *mens rea*. This principle is contained in the well known Latin maxim, '*Actus non facit reum nisi mens sit rea*'. It is to be noted that *mens rea* or criminal intent consists in doing

1. Sen Gupta : Evolution of Ancient Indian Law, (1950) p. 3.

2. See Manu : Institutes of Hindu Law Chapter VIII, p. 380.



some act voluntarily with the knowledge that it is fraudulent, dishonest or injurious to another. However, an act done under a *bona fide* belief, although criminal, shall be a good defence.<sup>1</sup> Thus, no act shall be a crime without *mens rea* or guilty-mind of the doer. It must be stated that the *mens rea* in case of a murder consists in malice forethought, for rape in forcible connection with a woman without her consent, for theft in an intention to steal and for procuring stolen goods with the knowledge that the goods was a stolen one. The cases of *D.P.P. v. Smith*<sup>2</sup> ; *Shaw v. D.P.P.*,<sup>3</sup> *State v. Dr. Vimladevi*,<sup>4</sup> can be cited in support of this connection.

It must be noted that the juristic concept '*actus reus*' represents the physical aspect of crime, while *mens rea*, its mental aspect. The concept of *mens rea* comprises several other states of mind, namely, will, intention, motive and so on. Thus it covers a wide range of mental attitudes and conditions the existence of which would give rise to *actus reus*. Sometimes *mens rea* refers to foresight of the consequences of an act and at others it consists in the act *per se* irrespective of its consequences.<sup>5</sup>

In some cases *mens rea* also denotes inattention of the doer of the criminal act which can otherwise be called his recklessness. Thus in case of manslaughter by negligence the accused causes death of the victim due to his negligence, nevertheless, he is held criminally liable.<sup>6</sup>

Though *mens rea* is an essential ingredient of every offence, it can be dispensed with in the following exceptional cases :—

- (i) Cases not criminal in any real sense but for punishment in view of the public welfare.
  - (ii) Public nuisance.
  - (iii) Cases which are criminal in form but for which summary mode of enforcement shall be adequate in view of the urgency and importance of the protection of civil rights violated thereby. Thus a legitimate exercise of the right of private defence<sup>7</sup> may exclude many intentional acts which would otherwise be offences. Again, a delicate surgical operation being the only remedy to save the life of a patient, if done with this object but with full knowledge that it can also be fatal, would not be an offence because the intention of the operating surgeon is to save the life of the patient.
- (2) Another important principle of criminal law is embodied in the maxim "*ignorantia facit excusat, ignorantia juris non excusat*". It suggests

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1. *R. v. Tolson*, (1889) 23 QBD 168 ; See also *Nathulal v. State of Madhya Pradesh*, AIR 1966 SC 43.
2. (1960) 3 WLR 56.
3. (1961) 2 All ER 446.
4. AIR 1963 SC 1572.
5. *Girja Nath v. State*, ILR (1945) 2 All 215 ; See also *Partington v. William*, 62 Cr App R 220 (1976) and *Ragina v. Morgan*, (1976) AC 182.
6. Section 304-A, IPC.
7. *Deo Narain v. State of U.P.*, AIR 1973 SC 473, See also *Satna Majhi v. State of Assam*, (1983) Cr LJ 287 and *Puran Singh v. State of Punjab*, AIR 1975 SC 1674 ; *Saheb Singh v. State of M.P.*, (1986) Cr LJ 128 ; *Mahinder Pal Jolly v. State of Punjab*, AIR 1979 SC 11 ; *Yogendra Morarji v. State of Gujarat*, AIR 1980 SC 660.

that mistake of fact is a good defence<sup>1</sup> in law of crime but not the mistake of law. Thus a man before going to Church left his gun unloaded. After he left, another man used it for a shoot and thereafter kept it loaded. On return of the first man from the Church, still thinking the gun to be unloaded as he left it, pulled the trigger with the result his wife was shot dead. The Court held that he was not liable for murder under an excuse of mistake of fact<sup>2</sup>. But there are certain statutory absolute liability cases which afford no excuse to the accused for his ignorance of fact. Thus in *R. v. Prince*,<sup>3</sup> the accused took an unmarried girl under the age of sixteen years out of the possession, and against the will of her father. The defence of the accused that he *bona fide* and honestly believed that the girl was older than sixteen as appeared from her physical built, was not accepted as the taking of the girl was unlawful. In such cases the law imposes a strict duty and holds the offender liable under criminal law. Thus, if a man trespasses on someone's land thinking that land to be his own, he shall nevertheless be liable.

As regards mistake of law, the criminal law affords no defence but it is a good evidence of mental condition of the offender. The reason for non-admissibility of mistake of law as a defence is that if it were so everyone would plead it and criminal law administration would be reduced to a sheer farce.<sup>4</sup>

(3) The law of crimes does not permit *ex post facto* legislation. That is to say, all those acts which may lead to punishment shall be duly notified and no one can be punished for an act which is not listed as crime at the time of its commission, but has become so subsequently.

(4) Another important principle of criminal law is that everyone shall be presumed innocent unless his guilt is specifically proved within the provisions of law. This is intended to afford every possible opportunity to the accused to defend himself.

(5) Under the criminal law an accomplice is treated at par with the principal accused and is punished equally.

(6) There are certain rights and protections afforded to the accused person not only during trial but also before and after trial. These rights and protections aim at providing a fair trial to an accused and eliminate possible abuse of judicial process resulting into miscarriage of justice. These rights include right to be produced before the Magistrate,<sup>5</sup> right to bail,<sup>6</sup> release on bond,<sup>7</sup> right to counsel and legal aid<sup>8</sup> etc.

The safeguards extended to an accused in course of trial are protection against self-incrimination and double jeopardy.<sup>9</sup> The former suggests that no person accused of any offence shall be compelled to be a witness against

1. Section, 76, IPC.

2. Quoted by Sir Michael Foster in Foster 265 T. AC.

3. (1875) ER 2 ; CCR 154.

4. Austin's Jurisprudence (3rd Ed.) Vol. I p. 408.

5. Art. 22 of Constitution of India and Sec. 76, Cr. P.C.

6. First Schedule of Cr. P.C.

7. Sec. 440(i), Cr. P.C.

8. Art. 22(3) and Art. 39-A of Constitution of India ; See also Secs. 303 & 304 of Cr. P.C.

9. Art. 20(3) of Constitution of India, see also Sec. 20 Evidence Act and Sec. 316 of the Code of Criminal Procedure, 1973.



himself while the latter makes it clear that no person shall be punished twice for the same offence. This is expressed in the well-known Latin maxim *nemo debet bis vexari si constat curiae quod sit pro una et eadem causa*.

Modern legislation on criminal law permits sufficient discretion to judicial authorities to meet the exigencies of time thus making the law more elastic and adaptable. Likewise, there has been a tendency to substitute indeterminate sentence for determinate one through correctional methods such as probation, parole, reformatories, open air camps, etc. Justifying this approach Prof. Vold observes : "it is not the humanity within the criminal but the criminality within the human being, that needs to be crushed, the wrongdoer must be given a chance to improve". Dr. Freud, however, suggests that law in fact is one of the agencies of social control, the efficient enforcement of which entirely rests with the institutions such as the police, prosecutors, courts, judges, jurors, probation officers, etc. It is for this reason that effectiveness of criminal law cannot be accurately assessed.

### **The purpose of Criminal Law**

The functioning of the criminal justice system is wide enough to achieve its goals and objectives. Its ultimate goal is undoubtedly to make the society safer for its people. More specific and generally accepted aims of criminal law include :—

1. The enforcement of criminal law should reflect the society's disapprobation for criminals activity through apprehending, convicting and punishing offenders.
2. Deterring criminals from indulging in criminal activities and at the same advising citizens as to how to avoid falling a victim to a crime.
3. Criminal law should be beneficially used to rehabilitate the corrigible offenders and incapacitating those who might otherwise prove to be a potential danger to the society.
4. Ensuring safety and security of people through maintenance of law and order.
5. Helping the victims to get adequate compensation from the offender wherever possible or ensuring their rehabilitation in any other way as the circumstance may warrant.
6. Efficient and fair application of law ensuring proper treatment of suspects, defendants, those who are held in custody and witnesses. Also ensuring that the innocents are acquitted without harassment and the guilty are duly punished.
7. Ensuring that criminal justice system is accountable to the society.

### **The Concept of Crime**

As stated earlier, crime has been defined as an anti-social, immoral or sinful behaviour which is contrary to the cherished norms, beliefs, customs and traditions of a given society. According to another school of thought, crime is an act which a particular social group regards as sufficiently menacing to its fundamental interests to justify formal reaction to restrain

the violation. *Stephen* has defined 'crime' as an act which is both forbidden by law and revolting to the moral sentiments of the society.

According to the legal definition, crime is any form of conduct which is declared to be socially harmful to a State and as such, forbidden by law under pain of some punishment.

*Paul W. Tappen* has defined crime as "an intentional act or omission in violation of criminal law, committed without defence or justification, and sanctioned by law as felony or misdemeanour".

As the function of criminal law is to reprimand the offender and prevent the incidence of crime, it becomes necessary to investigate into the nature of crime. Broadly speaking, every criminal behaviour must respond to the following tests in order to be reckoned as a crime—

- (1) There should be an external act (*actus*).
- (2) It should be done with some criminal intent (*mens rea*).
- (3) It should be a prohibited conduct under the existing law, and
- (4) It should carry with it some kind of punishment.

### Intention and motive distinguished

It shall not be out of place to draw a distinction between intent and motive at this place. The motive behind a criminal act may be ideal but the intention itself might be to cause some harm forbidden under the criminal law. Thus, if a man breaks into his neighbour's house to steal away a few loaves of bread from the latter's kitchen in order to feed his starving children, although his motive to save the children from starvation is good, he shall nevertheless be liable for the offence of theft because his intention to steal away the bread from his neighbour's house was wrongful. Thus, it is the intent and not the motive which is usually relevant in criminal cases.

In the Indian context, the substantive offences are defined in the Indian Penal Code and it is the sole authority in respect of general conditions of criminal liability and certain exemptions from such liability. Some of these crimes are cognizable<sup>1</sup> while others are non-cognizable. This Penal Code is supplemented by local or special statutes to punish certain categories of anti-social acts or behaviours which are prejudicial to the interests of the community or the State.

The various offences defined in the Indian Penal Code can broadly be classified into three major heads, namely, (i) crimes against property, (ii) crimes against person and (iii) crimes against the State. There are in all 511 sections in the Indian Penal Code, 1860. This Penal Code being more than 140 years old, needs to be thoroughly restructured keeping in view the changed socio-economic perspective of justice which is the signature tune of the modern welfare State.<sup>2</sup>

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1. Sec 2(c) of the Code of Criminal Procedure, 1973 defines cognizable offence as an offence in which a police officer may, in accordance with the First Schedule, or under any other law for the time being in force, arrest without warrant and non-cognizable offence means an offence in which a police officer has no authority to arrest without warrant.
  2. V.R. Krishna Iyer : Perspectives in Criminology Law & Social Change (1989) pp. 2-3.



## Criminology—Its importance

The need for study of criminal science (which includes criminology, penology, and criminal law) essentially emanates out of the psychological apprehension about insecurity of life, liberty and property of the people. It is the lust for wealth, satisfaction of baser urges, hatred or suspicion for one another that tends people to follow criminal behaviour and leads them to commit crime. The science of criminology, therefore, aims at taking up case to case study of different crimes and suggest measures so as to infuse the feeling of mutual confidence, respect and co-operation among the offenders. The recent penological reforms have achieved considerable success in this direction. The criminal law has been adequately modified to adapt itself to the modern reformatory policies. Liberalisation of punishment for affording greater opportunities for rehabilitation of offenders has been accepted as the ultimate object of penal justice. Some of the significant attributes of criminology are noted below :

(i) The most significant aspect of criminology is its concern for crime and criminals. It presupposes the study of criminal with basic assumption that no one is born criminal. It treats reformation as the ultimate object of punishment while individualisation the method of it. Most criminologists and penologists now generally agree that every criminal is corrigible if offered adequate opportunities through treatment methods.

(ii) As Donald Taft rightly puts it, the study of criminology also offers a background for profession and an opportunity for social workers. The police, the lawyers, attorneys, judges, jurors, probation officers, detectives and other specialists such as psychologists, psychiatrists and sociologists, etc., need perfect knowledge of criminology and administrative machinery for criminal justice system for their professional pursuits.

(iii) Criminology also seeks to create conditions conducive to social solidarity inasmuch as it tries to point out what behaviours are obnoxious and anti-social. It tries to convince the offenders through punitive sanction that anti-social conduct on their part is bound to entail them punishment, misery, misfortune and dis-repute in society. The reformatory treatment offered to first offenders, juvenile delinquents and insane criminals is intended to reform them as law-abiding members of society. Various correctional methods are devised to achieve this purpose. The ultimate object is to render a crime-free society as far as possible with a view to attaining social harmony.

(iv) It is further to be noted that with the advance of scientific knowledge and technology the complexities of life have also considerably multiplied. This has led to an enormous increase in crime rate and many new crimes which were hitherto altogether unknown have emerged. Thus thefts of automobiles, shop-lifting, smuggling, cheating, financial scams and scandals, terrorist activities etc., have become too common these days. Again white collar crimes have attracted the attention of criminologists in recent years. This in turn, has led criminal law administrators to devise new methods and

techniques to tackle these problems through intensive scientific researches. The modern computer related crimes have thrown new challenges before criminal law administrators throughout the world. Besides internet gambling, on-line pornography, the menace of drug-trafficking through computer-shopping and illegal downloading of money in transit are some of the cyber-crimes which are coming to light in recent years. Thus modern criminologists keep themselves acquainted with the new criminological developments and work out strategies to tackle these intricate problems for the protection of society.

A word about the Indian concept of criminology also deserves mention at this place. *Dr. P.K. Sen* rightly opines that Indian epics which depict the glory of past Indian civilisation and culture amply justify that our juris-consults were thoroughly acquainted with the science of criminology. Their main emphasis was on the mental aspect of the individual's personality because they regarded human mind as the centre from where all thoughts, whether good or bad, emanate. This ethical approach led them to believe that offenders indulge in criminal behaviour because of their mental depravity and physiogamy had nothing to do with it. It is for this reason that they treated delinquents in a medico-legal perspective and considered them as patients suffering from some mental disorder. Their stress was on the need for criminologists to understand the spiritual aspect of human existence and recognise the role of meditation and *yoga* in mitigating criminality. It is the egoistic urge of human being which prompts him to commit anti-social acts with a view to deriving pleasure. Criminologists must, therefore, strive to inculcate brotherhood and sense of equality among the members of society so that they learn to respect the law of their land.

The central concept in ancient Indian criminal jurisprudence was '*Dharma*' which was conceived to embody the rules of social order and was believed to be of divine origin. It was a broad concept comprising law, religion and morality, and was equally binding on all including the king. It was the primary duty of the king to punish the law-breakers and maintain order in society. The rules of criminal justice were contained in royal edicts or ordinances issued by the king within the broad parameters laid down by the *Dharma*. The king was expected to administer criminal justice with great care and caution and with utmost impartiality.<sup>1</sup> No offender could be allowed to escape punishment and the victims of crime were even awarded compensation in certain cases. It is thus evident that the criminal and penal law of India imbibed finer principles of modern criminology even in the ancient past.

### Radical Criminology

The most recent development in the field of criminology is radical criminology which has been influenced by Marxism and conflict theories. It makes a departure from the traditional criminology which has its focus on correctional institutions and personal pathologies of the criminal and concentrates on the view that the behaviours of the powerless in any society are more likely to be criminalised and this group is more likely to be

1. Manu Ch. IX, 311.



arrested, convicted and harshly sentenced. It further believes that many acts which are more injurious than crime are tolerated as perfectly legal because they tend to be behaviours which are carried out by the powerful group in society.

Influenced by the marxist view, the propounders of radical criminology have advocated the view that human nature itself is not criminal, it is the capitalism which makes people greedy, self-centred and exploitative. The laws are the tools of the owners of the means of production and are used to serve their interests in keeping their activities legal even if they are harmful, brutal or morally unacceptable. Thus there is differential enforcement of the criminal laws by the so called 'power' group. *Quinney's* views on radical criminology are thus based on the thesis that unequal economic situation which exists in a capitalistic society leads to inequality of power and political position. The economically powerful are also politically powerful and this results in conflict of interests between the powerful and the powerless. Criminality was, therefore, a social creation.<sup>1</sup>

The purpose of radical criminologists according to *Gifford Robert* is to show that various cultures which exist within a society are in conflict and that the neglect of these conflicts leads to unfair outcomes. The radical criminology is designed to highlight these problems.

The theory propounded by radical criminologists had its impact on criminological developments as they raised questions of great social relevance. But they have little effect on penal policy particularly of socialist countries.

In the Indian context as rightly pointed out by Justice *V.R. Krishna Iyer*, "radical humanism and progressive penology must gravitate towards the processes which heal and humanise, restore and socialise and reconcile judicial punishment with dignity of personhood". Continuing further he observed, "every saint has a past and every sinner a future. And the technology of rehabilitation is the key to the manifestation of the divinity already in man." According to him, "the cultural roots of India, with *Valmiki* the greatest poet with a robber past and such instances of conversion from criminality to nobility fully corroborate with the correctional philosophy advocated by radical penologists."<sup>2</sup>

### Possibility of Science of Criminology

It is difficult to treat criminology as a science in the real sense of the term. As *Sutherland* rightly pointed out, the essence of science lies in general propositions of universal validity which can be made only in regard to stable and homogenous units. Crime which is the subject-matter of criminology, is neither stable nor homogenous concept. It is rather a variable content changing from place to place and time to time, therefore scientific criminal behaviour is impossible. *Prof. Sellin* also observed that crimes are like any other social phenomenon which have no stable unit. In his view, the ultimate object of criminology is to study law-making and reactions to

1. *Quinney Richard* : Class, State and Crime on the Theory and Practice of Criminal Justice (2nd ed.) p. 89.
2. Quoted from *V.R. Krishna Iyer* : A National Prison Policy, Constitutional Perspective and Pragmatic Parameters (Andhra University), (1981), pp. 14-15.

law-breaking from the point of view of efficacy of law as a method of social control.

The gravity of crime as a social problem lies in the fact that it affects the public at large. The sufferings caused to the public may sometimes be direct as found in case of theft, treason, destruction of property etc. or it may even be indirect as in case of rape, the loss of reputation, etc. The importance of the study of criminology lies in considering crime as a symptom of social disorganisation. It is an indication that there is something wrong somewhere in the society which needs to be looked into. It is well known that the essence of science lies in universal application of its general principles. Obviously, the present criminology does not respond favourably to this crucial test of science. Nevertheless, criminologists are constantly striving to work out standard rules for prevention of crime and criminals which may ultimately be generalised as fundamental principles of criminology in time to come.

Commenting on the feasibility of criminology as a science, *Dr. Hurwitz* observed that even if criminology is unlikely ever to discover any universal prescription for a patent medicine against future criminality because of the great variety of factors in real life which cannot be comprised in a single criminal policy, the criminological researches have started influencing the general and professional mentality and a rational view of several questions connected with criminality. *Dr. Radzinowicz* has also expressed similar views regarding scientific approach to criminology.<sup>1</sup>

### Penology—Its future

It has been generally accepted that the attitude towards crime and criminal at a given time in a society represents the basic values of that society. By and large, three types of reactions are discernible in various societies. The first is a traditional reaction which regards criminal as basically depraved and dangerous person for whom infliction of punishment is the only alternative to eliminate him from normal society. This punitive approach, however, represents the earlier stages of development of penology and no longer finds support in modern times. The second reaction treats criminal as a victim of his circumstances and a product of multiple factors operating within the society. Thus criminal is treated as a sick person requiring therapeutic treatment. The third and more recent reaction to criminal is to be found in preventive approach which lays greater emphasis on eliminating conditions which are responsible for criminality in the offender. It must, however, be stated that these reactions towards criminal are co-extensive and quite often overlap one another. The difference between them is to be found in their focus of attention.

According to the principle of utilitarian hedonism, punishment should not exceed more than what is absolutely necessary to produce the desired effect on the criminal and society. For this purpose, the personality of the offender in physio-psychological terms has to be understood in the background of his social surroundings. It has been realised that feeling of inadequacy, frustration and emotional insecurity often play a dominant role in giving rise to the criminal tendency. More recently, penological researches

1. Leon Radzinowicz : In Search of Criminology, p. 117.



in their wake have evolved a new thinking based on the premise that crime is a social fact and human act, the process of dealing with a criminal does not come to an end by imposing punishment on him in accordance with law. His after-care for resocialisation and reformation is equally important. This aspect of treatment of offenders must also be taken into account while drawing up any programme for the prevention of crime and treatment of offenders.

Recent developments in the field of penology are marked with rationalisation of punishment and emphasis on clinical method of treatment of offenders and their rehabilitation through adequate after-care measures. The utility or futility of punishment is to be judged on the basis of utilitarian principles propounded by *Jeremy Bentham*. Modern tendency is to treat punishment as an evil which should be used only if it serves the ends of justice. Commenting on the desirability of punishment. *Prof. H.L.A. Hart* observed, "we do not live in society in order to condemn, though we may condemn in order to live."<sup>1</sup> This is indeed a sound warning to modern penologist which suggests that punishment should respond to needs of social defence. In sum, the ultimate end of penal justice is to protect and promote the welfare of the State, society and the individual.

It is now well recognised that the ultimate object of punishment is the prevention of crime and the protection of society. It is also widely agreed that no theory of punishment can achieve the real purpose of punishment singly. As rightly pointed out by *Caldwell*, "punishment is an art which involves the balancing of retribution, deterrence and reformation in terms not only of the court and the offender but also of the values in which it takes place and in the balancing of these purposes of punishments, first one and then the other, receives emphasis as the accompanying conditions change."<sup>2</sup>

### Approach to Penology

Like criminology, penology may also be approached from various points of view, each giving rise to a particular kind of penology. These may be called Administrative Penology, Scientific Penology, Academic Penology and Analytical Penology.

(1) **Administrative Penology** can also be called applied penology because it represents different penological systems in force in different countries. Its predominant feature is implementation of governmental penal policies and institutional treatment of offenders. Its prime functions are custody, security and control. It addresses itself to the solution of penological problems.

(2) **Scientific penology** attempts to solve the problems arising in treatment of offenders under the aegis of specialists, particularly from the medico-psychological point of view. Its principal concern is to probe into the personality of offenders and not the offences. Criminal penology, undoubtedly is a part of scientific penology. It is based on the conception that there is always a determinable relationship between cause and effect.

(3) **Academic penology** is mainly descriptive in character, its

1. Hart H.L.A. : Punishments and Responsibility, p. 182.

2. Caldwell : Criminology, p. 403.

main purpose being dissemination of penological knowledge through intensive teaching and research. It concerns itself with theoretical knowledge of penology.

(4) **Analytical penology** aims at ascertaining as objectively as possible, the adequacy of existing penal policies and methods and suggest measures for improving the system. Thus it makes a critical analysis of penal measures and offers solutions for efficient administration of penal justice.

Analytical penology is based on a broader reality and treats crime and criminals as social phenomenon. It needs the assistance of scientific penology to perform its functions by careful interpretation, comparison of relevant data and observation of the functioning of the existing machinery of criminal justice and penological system in an objective manner. The main task of analytical penology is to examine and evaluate the socio-economic and political values, among which human rights play the most important role, and the corresponding criminal policy of which penological policy is a part.<sup>1</sup>

It must be stated that although these different kinds of penologies are intended to pursue different purposes, they are all directed to meet a common goal, namely, treatment of offenders through modern improvised scientific methods.

### **Caution against Excessive Reformation**

Despite the fact that traditional methods of deterrent and retributive justice have fallen into disuse and are now substituted by modern reformatory measures, it must be stated that excessive reformation is likely to defeat the very object of penology. If the difference between the life inside and outside prison is narrowed down beyond a certain limit, it is bound to culminate into catastrophic results. The element of deterrence is as much necessary in any penal programme as reformation, otherwise the very purpose of punishment will be defeated. It must be realised that ultimate control and prevention of crime depends on the proper utilisation of criminological knowledge to the needs of society. This accounts for emerging importance of applied criminology in recent years. The focus of attention should therefore not only be the 'offender' or his 'criminal act' but the interest of society in general and the rights of victim in particular, which must be protected at all costs. It is only then that the real objective of penology would be accomplished. A balanced penal programme justifying deterrence when it is absolutely necessary and reformation as a general mode of treatment of offenders would perhaps be the best policy to achieve the desired ends of criminal justice administration. Justice must be prompt, stern and summary inspiring a wholesome fear in the criminal. It must not be forgotten that the protection of society against crimes and criminals is far more important than the personal gain of the individual offender in committing a particular crime. Therefore, it is the offender who must suffer in the larger interests of the community. Then only the real ends of penal justice can be accomplished. It must be remembered that punishment

1. Manuel Lopez Rey : 'Analytical Penology' published in Studies In Penology (IPPF) p. 142.



presupposes an offence and the measure of punishment must not be lesser than the offence deserves. It must be recognised that "there is a strong and wide-spread demand of retribution in the sense of the reprobation."

It must be reiterated that the faith and philosophy behind administration of criminal justice is attainment of social justice and not individual justice. Therefore, a blatant shift to reformation cannot be accepted as our constitutional creed. Commenting on this aspect of penal justice, *Mr. Justice Gulab Gupta* of the High Court of Madhya Pradesh pointed out, "if reformation in fact benefits the society, the conscience of social justice would be satisfied but if the reformation accrues to the benefit of the individual alone, social justice would remain suffocated. Let this not happen even unwillingly or unknowingly".<sup>1</sup>

The active participation of the people in the implementation of correctional penal programme may be helpful in exercising effective control and supervision over the offenders. Since the criminal is the product of the community, it is for the community to devise ways and means to solve this problem. The *Nyaya Panchayat* system representing community justice may perhaps play a significant role in this sphere. The *Lok Adalats* (Peoples' Court) which are meant for quick and cheap justice may also go a long way in accomplishing the objective of social justice.<sup>2</sup>

Above all, the impact of information technology and its widening dimensions have to be recognised by the legal fraternity, particularly those who are concerned with the administration of criminal justice. The courts, advocates, academicians, law-teachers and even the litigants have to acquaint themselves with the use of the developed and developing tools and technologies to meet the demands thrown up by numerous statutes and litigation explosion. The computerisation of courts, offices, law-chambers and libraries, listing of cases, judgments etc. has rendered it possible to make the necessary information instantaneously available. Thus, it will greatly help in plugging the loop-holes of the existing criminal justice system and expose and destroy inefficiency, unfairness and injustice which has crept into administration of criminal justice.

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1. 'Social Justice Perspective of Criminal Justice' by Mr. Justice Gulab Gupta. (Central India Law Quarterly Vol I (1987) p. 27.

2. Legal Services Authorities Act, 1987 (Ss. 19-22).

### Chapter III

## THE SCHOOLS OF CRIMINOLOGY

The history of primitive societies and early medieval period reveals that human thinking in those days was predominated by religious mysticism and all human relations were regulated through myths, superstitions and religious tenets prevailing in a particular society. This, in other words, meant that little attention was devoted to the motive, environment and psychology of the offender in the causation of crime. Moreover, in absence of any definite principle for the guidance of those who were concerned with the criminal justice administration, punishments were often haphazard, arbitrary and irrational. This situation prevailed till the end of seventeenth century. Thereafter, with the change in human thinking and evolution of modern society, certain social reformers took up the cause of criminals and devoted their attention to analysis of crime causation. This finally led to the emergence of criminology as a branch of knowledge through development of different schools of criminology.

It has been generally accepted that a systematic study of criminology was first taken up by the Italian scholar, Cesare Bonesana Marchese de Beccaria (1738-94) who is known as the founder of modern criminology. His greatest contribution to the science of criminology was that he for the first time proceeded with the study of criminals on a scientific basis and reached certain conclusions from which definite methods of handling crime and criminals could be worked out. Thus the 'theories of criminology' or 'the schools of criminology' are of a later origin. Explaining the meaning of the term 'School of Criminology' Sutherland pointed out that it connotes the system of thought which consists of an integrated theory of causation of crime and of policies of control implied in the theory of causation. The adherents of each school try to explain the causation of crime and criminal behaviour in their own way relying on the theory propounded by the exponent of that particular school. It is, therefore, evident that each school of criminology explains crime in its own manner and suggests punishment and preventive measures to suit its ideology. It must be stated that each of the schools represents the social attitude of people towards crime and criminal in a given time.

In an attempt to find a rational explanation of crime, a large number of theories have been propounded. Various factors such as evil spirit, sin, disease, heredity, economic maladjustment etc. have been put forward either singly or together to explain criminality. With the advance of behavioural sciences, monogenetic explanation of human conduct is no longer valid and the modern trend is to adopt an eclectic view about the genesis of crime. However, some criminologists still tend to lay greater emphasis on physical traits in order to justify exclusive resort to correctional methods for the treatment of offenders.



## 1. Pre-classical School of Criminology

The period of seventeenth and eighteenth century in Europe was dominated by the scholasticism of *Saint Thomas Aquinas*. The dominance of religion in State activities was the chief characteristic of that time. In political sphere, thinkers such as *Hobbes* and *Locke* were concentrating on social-contract as the basis of social evolution. The concept of Divine right of king advocating supremacy of monarch was held in great esteem. As scientific knowledge was yet unknown, the concept of crime was rather vague and obscure. There was a general belief that man by nature is simple and his actions are controlled by some super power. It was generally believed that a man commits crime due to the influence of some external spirit called 'demon' or 'devil'. Thus an offender commits a wrongful act not because of his free will but due to the influence of some super power. No attempt was, however, made to probe into the real causes of crime. This demnological theory of criminality propounded by the exponents of pre-classical school acknowledged the omnipotence of spirit—which they regarded as a great power. They considered crime and criminals as an evidence of the fact that the individual was possessed of devil, or demon and the only cure for which was testimony of the effectiveness of the spirit. Worships, sacrifices and ordeals by water and fire were usually prescribed to specify the spirit and relieve the victim from its evil influence. Trial by battle was common mode of deciding the fate of criminal. The right of society to punish the offender was, however, well recognised. The offender was regarded as an innately depraved person who could be cured only by torture and pain. The evolution of criminal law was yet at a rudimentary stage. *Hobbes* suggested that fear of punishment at the hands of monarch was a sufficient deterrent for the members of early society to keep them away from sinful acts which were synonymous to crimes. Thus the theosophists, notably *St. Thomas Aquinas* and the social contract writers such as *Dante Alighieri*, *Machiavelli*, *Martin Luther* and *Jean Bodin* provided immediate background for *Beccaria's* classical school at a later stage. The pre-classical thinking, however, withered away with the lapse of time and advancement of knowledge.

The principle of divine intervention especially through ordeals, was in vogue in ancient India as well. The oaths and ordeals played a very important role in the ancient judicial system in determining the guilt of the offender. The justification advanced for these rituals was the familiar belief that "when the human agency fails, recourse to divine means of proof becomes most inevitable". Though these practices appear to be most irrational and barbarious to the modern mind, they were universally accepted and were in existence in most christian countries till thirteenth century.<sup>1</sup> The Roman law completely ignored the system of ordeals and it was forbidden in Quran.

The validity of trial by ordeal was questioned even by ancient authorities such as *Purvapaksa* but ever since the time of *Manu* it has been repeatedly argued that ordeals are the creations of *Brahma* and have been practised by gods, great sages and all thoughtful persons. *Medhatithi* further pointed out that ordeals have worked efficiently since time of sages and

1. A Dubois : Hindu Manners, Customs & Ceremonies (1936) p. 661.

there are examples of *Vasistha*, *Vatsa* and others who tried such tests with success.<sup>1</sup> The system, however, fell into disuse with the advent of British rule in India and subsequent rationalisation of the penal law.

## 2. The Classical School

During the middle of eighteenth century *Beccaria*, the pioneer of modern criminology expounded his naturalistic theory of criminality by rejecting the omnipotence of evil spirit. He laid greater emphasis on mental phenomenon of the individual and attributed crime to 'free will' of the individual. Thus he was much influenced by the utilitarian philosophy of his time which placed reliance on hedonism, namely, the "pain and pleasure theory". As *Donald Taft* rightly put it this doctrine implied the notion of causation in terms of free choice to commit crime by rational man seeking pleasure and avoiding pain. The main tenets of classical school<sup>2</sup> of criminology are noted below :

- (i) Man's emergence from the State involved the application of his reason as a responsible individual.
- (ii) It is the act of an individual and not his intent which forms the basis for determining criminality in him. In other words, criminologists are concerned with the 'act' of the criminal rather than his 'intent'. They could never think that there could be something like crime causation.
- (iii) The classical writers accepted punishment as a principal method of infliction of pain, humiliation and disgrace to create 'fear' in man to control his behaviour.
- (iv) The propounders of this school, however, considered prevention of crime more important than the punishment for it. They, therefore, stressed on the need for a Criminal Code in France, Germany and Italy to systematise punishment for forbidden acts. Thus the real contribution of classical school of criminology lies in the fact that it underlined the need for a well-defined criminal justice system.
- (v) The advocates of classical school supported the right of the State to punish the offenders in the interest of public security. Relying on the hedonistic principle of pain and pleasure, they pointed out that individualisation was to be the basis of punishment. This in other words meant that punishment was to be awarded keeping in view the pleasure derived by the criminal from the crime and the pain caused to the victim from it. They, however, pleaded for equalisation of justice which meant equal punishment for same offence.
- (vi) The exponents of classical school further believed that the criminal law primarily rests on positive sanctions. They were against the use of arbitrary powers of Judges.<sup>3</sup> In their opinion

1. Quoted from Dr. S.N. Pendse's *Oaths & Ordeals in Dharmashastra* pp. 83-84.

2. The main exponents of Classical School were William Blackstone (1723-80), Jeremy Bentham (1748-1832), Samuel Romilly (1757-1878) Feuerbach (1775-1833), Robert Peel ; Rossi Rane Gorraud, etc.

3. Sen P.K. : *Penology—Old and New* (1943) p. 44.



the Judges should limit their verdicts strictly within the confines of law. They also abhorred torturous punishments.

Thus classical school propounded by *Beccaria* came into existence as a result of the influence of writings of *Montesquie*, *Hume*, *Bacon* and *Rousseau*. His famous work *Essays on Crimes and Punishment* received wide acclamation all over Europe and gave a filip to a new criminological thinking in the contemporary west. He sought to humanise the criminal law by insisting on natural rights of human beings. He raised his voice against severe punishment, torture and death penalty. *Beccaria's* views on crime and punishment were also supported by *Voltaire* as a result of which a number of European countries redrafted their penal codes mitigating the rigorous barbaric punishments and some of them even went to the extent of abolishing capital punishment from their Codes.

The contribution of classical school to the development of rationalised criminological thinking was by no means less important, nevertheless, it had its own pitfalls. The major shortcoming of the classical school was that it proceeded on an abstract presumption of *free will* and relied solely on the act (*i.e.*, the crime) without devoting any attention to the state of mind of the criminal. It erred in prescribing equal punishment for same offence thus making no distinction between first offenders and habitual criminals. However, the greatest achievement of this school of criminology lies in the fact that it suggested a substantial criminal policy which was easy to administer without resort to the imposition of arbitrary punishment. It goes to the credit of *Beccaria* who denounced the earlier concepts of crime and criminals which were based on religious fallacies and myths and shifted emphasis on the need for concentrating on the personality of an offender in order to determine his guilt and punishment.

### 3. Neo-classical School

The '*free will*' theory of classical school did not survive for long. It was soon realised that the exponents of classical school faltered in their approach in ignoring the individual differences under certain situations and treating first offenders and the habituals alike on the basis of similarity of act or crime. The neo-classists asserted that certain categories of offenders such as minors, idiots, insane or incompetent had to be treated leniently irrespective of the similarity of their criminal act because these persons were incapable of appreciating the difference between right and wrong. This tendency of neo-classists to distinguish criminals according to their mental depravity was indeed a progressive step inasmuch as it emphasised the need for modifying the classical view. Thus the contribution of neo-classical thought to the science of criminology has its own merits. The main tenets of neo-classical school of criminology can be summarised as follows :

- (i) Neo-classists approached the study of criminology on scientific lines by recognising that certain extenuating situations or mental disorders deprive a person of his normal capacity to control his conduct. Thus they justified mitigation of equal punishment in cases of certain psychopathic offenders. Commenting on this point, *Prof. Gillin* observed that neo-classists represent a reaction against the severity of classical

- view of equal punishment for the same offence.
- (ii) Neo-classists were the first in point of time to bring out a distinction between the first offenders and the recidivists. They supported individualisation of offender and treatment methods which required the punishment to suit the psychopathic circumstances of the accused. Thus although the 'act' or the 'crime' still remained the sole determining factor for adjudging criminality without any regard to the intent, yet the neo-classical school focused at least some attention on mental causation indirectly.
  - (iii) The advocates of this school started with the basic assumption that man acting on reason and intelligence, is a self-determining person and therefore is responsible for his conduct. But those lacking normal intelligence or having some mental depravity are irresponsible to their conduct as they do not possess the capacity of distinguishing between good or bad and, therefore, should be treated differently from the *responsible* offenders.
  - (iv) Although neo-classists recommended lenient treatment for "irresponsible" or mentally depraved criminals on account of their incapacity to resist criminal tendency but they unanimously believed that all criminals, whether responsible or irresponsible, must be kept segregated from the society.
  - (v) It is significant to note that distinction between responsibility and irresponsibility, that is the sanity and insanity of the criminals as suggested by neo-classical school of criminology paved way to subsequent formulation of different correctional institutions such as parole, probation, reformatories, open-air-camps, etc. in the administration of criminal justice. Thus, it is through this school that attention of criminologists was drawn for the first time towards the fact that all crimes do have a cause. It must, however, be noted that although this causation which was initially confined to psychopathy or psychology was later expanded further and finally the positivists succeeded in establishing reasonable relationship between crime and environment of the criminal.
  - (vi) Neo-classists adopted subjective approach to criminology and concentrated their attention on the conditions under which an individual commits crime.

The above discussion makes it clear that main contribution of the neo-classical school of criminology lies in the fact that it came out with certain concessions in the '*free will*' theory of classical school and suggested that an individual might commit criminal acts due to certain extenuating circumstances which should be duly taken into consideration at the time of awarding punishment. Thus besides the criminal act as such, the personality of the criminal as a whole, namely, his antecedents, motives, previous life-history, general character, etc., should not be lost sight of in assessing his guilt. It may be noted that the origin of jury system in criminal jurisprudence is essentially an outcome of the reaction of neo-classical approach towards the treatment of offenders.



As to the shortcomings of neo-classical school of criminology, it must be stated that the exponents of this theory believed that the criminal, whether responsible or irresponsible, is a menace to society and, therefore, needs to be eliminated from it. As *Saieilles* observed : "the protection of society from crimes must be our primary concern". He considered responsibility as a concept of social organisation which the exponents of neo-classical school seek to convert into metaphysical and abstract notion without corresponding reality. These abstract notions of 'free will' and 'responsibility' cannot furnish legal ground for Judges and juries to form a basis for their discretion.

#### 4. Positive School

With the advance of behavioural sciences, the monogenetic explanation of human conduct lost its validity and a new trend to adopt an eclectic view about the genesis of crime gradually developed. By the nineteenth century, certain French doctors were successful in establishing that it was neither 'free will' of the offender nor his innate depravity which actuated him to commit crime but the real cause of criminality lay in anthropological features of the criminal. Some phrenologists also tried to demonstrate the organic functioning of brain and enthusiastically established a co-relationship between criminality and the structure and functioning of brain. This led to the emergence of the positive school of criminology. The main exponents of this school were three eminent Italian criminologists, namely, *Cesare Lombroso*, *Raffaele Garofalo* and *Enrico Ferri*. It is for this reason that this school is also called the Italian School of Criminology.

#### Cesare Lombroso (1836-1909)

The first attempt to understand the personality of offenders in physical terms was made by *Lombroso* of the Italian School of criminological Thought who is regarded as the originator of modern criminology. He was educated in medicine and became a specialist in psychiatry. He worked in military for sometime handling the mentally afflicted soldiers but later he was associated with the University of Turin. His first published work was **L'Uomo Delequente** which meant "the criminal man". It was published in 1876 and consisted of 252 pages, the fifth edition of which came out in 1897 in 1903 pages. He was the first to employ scientific methods in explaining criminal behaviour and shifted the emphasis from crime to criminal.

*Lombroso* adopted an objective and empirical approach to the study of criminals through his anthropological experiments. After an intensive study of physical characteristics of his patients and later on of criminals, he came to a definite conclusion that criminals were physically inferior in the standard of growth and, therefore, developed a tendency for inferior acts. He further generalised that criminals are less sensitive to pain and therefore they have little regard for the sufferings of others.<sup>1</sup> Thus through his biological and anthropological researches on criminals *Lombroso* justified the involvement of *Darwin's* theory of biological determinism in criminal behaviour. He classified criminals into three main categories :—

(i) *The Atavists or hereditary criminals.*—*Lombroso* also termed them as born-criminals. In his opinion born-criminals were of a distinct type who

1. Taft : 'Criminology' 4th Ed. p. 64.

could not refrain from indulging in criminality and environment had no relevance whatsoever to the crimes committed by the *Atavists*. He, therefore, considered these criminals as incorrigibles, *i.e.*, beyond reformation. In his view, the criminal reflected a reversion to an early and more primitive being who was both mentally and physically inferior. He resembled those of apes and had ape-like characteristics. *Lombroso's* theory used physical characteristics as indicators of criminality. He enumerated as many as sixteen physical abnormalities of a criminal some of which were peculiar size and shape of head, eye, enlarged jaw and cheek bones, fleshy lips, abnormal teeth, long or flat chin, retreating forehead, dark skin, twisted nose and so on. Though he moderated his theory of physical anomaly in later years but his emphasis throughout his work was on human physical traits which also included biology, psychology and environment. He revised his theory of atavism in 1906 and held that only one-third of criminals were born criminals and not all the criminals. Finally, he conceded that his theory of atavism was ill-founded and held that they were in fact occasional criminals.

*Enrico Ferri* subsequently challenged *Lombroso's* theory of atavism and demonstrated that it was erroneous to think that criminals were incorrigibles. He believed that just as non-criminals could commit crimes if placed in favourable circumstances so also the criminals could refrain from criminality in healthy surroundings.

(ii) *Insane Criminals*.—The second category of criminals according to *Lombroso* consisted of insane criminals who resorted to criminality on account of certain mental depravity or disorder.

(iii) *Criminoids*.—The third category of criminals, according to him, was those of *criminoids* who were physical criminal type and had a tendency to commit crime to overcome their inferiority in order to meet the needs of survival.

*Lombroso* was the first criminologist who made an attempt to understand the personality of offenders in physical terms. He employed scientific methods in explaining criminal behaviour and shifted the emphasis from crime to criminal. His theory was that criminals were different physically from normal persons and possessed few physical characteristics of inferior animal world. The contribution of *Lombroso* to the development of the science of criminology may briefly be summed up in the following words.

*Lombroso*, laid consistent emphasis over the individual personality of the criminal in the incidence of crime. This view gained favour in subsequent years and modern criminological measures are devised to attain the aim of individualisation in the treatment of criminals. It has been rightly commented that the sociologists emphasise on the external factors, psychologists on the internal factors, while *Lombroso* held that both had a common denominator—the "individual".

While analysing causes of crime, *Lombroso* laid greater emphasis on the biological nature of human behaviour and thus indirectly drew attention of criminologists to the impact of environment on crime-causation.

It must, however, be stated that at a later stage *Lombroso* himself was convinced about the futility of his theory of *atavism* and therefore extended his theory of determinism to social as well as economic situations of



criminals. Thus he was positive in method and objective in approach which subsequently paved way to formulation of multiple-causation theory of crime by the sociologists.

*Goring*, an English criminologist, who was one of the contemporaries of *Lombroso*, also carried out his own researches on the psychology of criminals. After a series of comparisons between the criminals and non-criminals he concluded that there was nothing like 'physical-criminal type' as suggested by *Lombroso*. He, attacked the idea that people were more or less criminogenic, depending upon their physical characteristics. He opposed the view that criminality could be inherited. *Katherine S. Williams* has illustrated the difference between the views held by *Lombroso* and *Goring* by an example drawn from basket-ball. If we apply the *Lombrosian* theory to basket-ball players, the argument might be that they are abnormal because they are tall, whereas *Goring's* argument would be that they have been selected for that sport because of their tall stature.<sup>1</sup> *Goring*, however, agreed with *Lombroso's* statistical and inductive method and supported the latter's view that criminals were often mentally depraved. He also commended *Lombroso* for his assertion that central theme of penology was neither crime nor punishment, but the 'individual'.

*Gabriel de Tarde*, the eminent French criminologist and social psychologist, criticised *Lombroso's* anthropometric measurements on which he formulated his theory of criminal behaviour, and offered a social explanation of crime. He asserted that criminal behaviour is the result of a learning process, therefore, any speculation regarding direct relationship between physical appearance and criminal propensities of criminals would mean overlooking the real causes of criminality. He also denounced the proposition of phrenologists who tried to establish a correlation between the skull, the brain and the social behaviour of a person.

By the time of *Lombroso's* death in 1909 it became abundantly clear that his theories were over-simplification of facts and rather naive, hence the notion that criminal is physically atavistic-type lost all credence. The assumption that there is some nexus between *atavism* and criminal behaviour had no scientific basis. The modern positivism in criminology has developed its own systematic views in which there is little scope for *Lombroso's atavism*. Some modern writers even speak of it as '*Lombrosian myth*' in criminology. The critics notably, *Lindesmith* and *Levin* even alleged that *Lombroso's* faulty assumptions were responsible for hindering the growth of scientific criminology for few more decades.

Criticising *Lombrosian* views, *Prof. Sutherland* observed that by shifting attention from crime as a social phenomenon to crime as an individual phenomenon, *Lombroso* delayed for fifty years the work which was in progress at the time of its origin and in addition, made no lasting contribution of its own.<sup>2</sup>

Be that as it may, it hardly needs to be reiterated that contribution of *Lombroso* to the development of criminology is by no means less significant. Commenting on this point *Donald Taft* observed, "the importance of

1. Katherine S. Williams : Text Book on Criminology (First Indian Reprint, 2001) p. 147.

2. Sutherland & Cressey : The Principles of Criminology (6th Ed) p. 55.

*Lombroso's* work lies in the great influence it had upon criminology and also upon penal practice".<sup>1</sup> The importance of *Lombroso's* work lies in its scientific methodology and his rejection of free-will theory.

### ✓ Enrico Ferri (1856-1928)

Another chief exponent of the positive school of criminology was *Enrico Ferri*.<sup>2</sup> He challenged *Lombrosian* view of criminality. Through his scholarly researches, *Ferri* proved that mere biological reasons were not enough to account for criminality. He firmly believed that other factors such as emotional reaction, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in men. It is for this reason that he is sometimes called the founder of 'criminal sociology.'

The major contribution of *Ferri* to the field of criminology is his "*Law of Criminal Saturation*". This theory presupposes that the crime is the synthetic product of three main factors :—

- (1) Physical or geographical ;
- (2) Anthropological ; and
- (3) Psychological or social.

Thus *Ferri* emphasised that criminal behaviour is an outcome of a variety of factors having their combined effect on the individual. According to him social change, which is inevitable in a dynamic society ; results in disharmony, conflict and cultural variations. As a result of this, social disorganization takes place and traditional patterns of social control mechanism totally break down. In the wake of such rapid social changes, the incidence of crime is bound to increase tremendously. The heterogeneity of social conditions destroys the congenial social relationship, creating a social vacuum which proves to be a fertile ground for criminality.

Many critics, however, opposed *Ferri's* law of criminal saturation stating that it is nothing more than a statement that the law of cause and effect equally applies to criminal behaviour as well.

*Ferri* emphasised that a criminal should be treated as a product of the conditions which played his life. Therefore, the basic purpose of crime prevention programme should be to remove conditions making for crime.

*Ferri* worked out a five-fold classification of criminals, namely :

- (1) born criminals ;
- (2) occasional criminals ;
- (3) passionate criminals ;
- (4) insane criminals ; and
- (5) habitual criminals.

He suggested an intensive programme of crime prevention and recommended a series of measures for treatment of offenders. He asserted that punishment could be one of the possible methods of reforming the criminal. He favoured indeterminate sentence keeping in view the possible

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1. Taft : *Criminology* (1959), p. 80.

2. Enrico Ferri's "*Criminal Sociology*" is an outstanding work in the field of criminology. During Mussolini's regime, Ferri prepared a new Penal Code for Italy in 1921. This was popularly called the '*Ferri Project*'.



chances of inmate's re-adjustment in the community.

In his 'Penal Project' *Ferri* denied moral responsibility and denounced punishment for retribution and moral culpability.

### **Raffaele Garofalo (1852-1934)**

*Raffaele Garofalo* was one of the three main exponents of positive school of criminology. Born in Naples in 1852, *Garofalo* started his career as a Magistrate in Italian courts and rose to the position of Minister of Justice in 1903. He stressed the need for a closer study of the circumstances and living condition of criminals. He firmly believed that a criminal is a creature of his own environment. He was the only positivist who had varied experience as an eminent jurist, a senator and a professor of criminal law. He, therefore, approached the problem of crime and criminals in an altogether different manner than those of his contemporaries. Rejecting the classical theory of free-will as a cause of crime *Garofalo* defined crime as an act which offends the sentiments of pity and probity possessed by an average person and which are injurious to the society. He emphasised that lack of pity generates crimes against person while lack of probity leads to crimes against property. As to the classification of criminals, he rejected *Ferri's* classification and placed offenders into four main categories, namely :

- (1) murderers whom he called "*endemic*" criminals ;
- (2) violent criminals who are affected by environmental influences such as prejudices of honour, politics and religion ;
- (3) criminals lacking in sentiment of probity ; and
- (4) Lascivious or lustful criminals who commit crimes against sex and chastity.

As a member of the Italian 'judiciary' *Garofalo* was well acquainted with the then existing criminal law and procedure in the administration of criminal justice and recommended death, imprisonment for life or transportation and reparation as three modes of punishment for criminals. Out of his experience as a Judge and having witnessed total failure of correctional measures in France, *Garofalo* was not very optimistic about reformation of offenders. He, therefore, strongly pleaded for elimination of habitual offenders who were incapable of social adaptation as a measure of social defence.

### **Gabriel Tarde (1843-94)**

*Gabriel Tarde* was a critic of positive school of criminology. He asserted that influence of social environment was most emphatic on the criminal behaviour and the biological and physical factors only had a casual effect on it. He pointed out that law of insertion and imitation was responsible for the incidence of crime. The members of society are prone to imitate the behaviour of their associates. Likewise, the subordinate or inferior members have a tendency to imitate the ways of their superiors. Consequently, as regards crimes, the beginners have a tendency to imitate the acts of habitual criminals and thus they lend into criminality. The effect of imitation is still worse on youngsters who are prone to fall on easy prey to criminality. Particularly, the impact of movie and cinema and television is so great on teenagers that it perverts their thoughts and actions which eventually

makes them delinquents. Thus there is considerable truth in *Tarde's* assertion that, "crime, like other social phenomenon starts as a fashion and becomes a custom". He classified criminals into urban and rural types and expressed a view that crimes in urban areas are far more serious in nature than those of rural places. Despite the fact that the views of *Tarde* were logical and nearer to truth, they were discarded as over simplification of facts.

### An appraisal of Positive School of Criminology

It would be seen that the positive school of criminology emerged essentially out of the reaction against earlier classical and neo-classical theories. The advocates of this school completely discarded the theories of omnipotence of spirit and *free will* on the ground that they were hypothetical and irrational. Alternatively, they attributed criminality to anthropological, physical and social environment. The greatest contribution of positive school to the development of criminal science lies in the fact that the attention of criminologists was drawn for the first time towards the individual, that is, the personality of criminal rather than his act (crime) or punishment. This certainly paved way for the modern penologists to formulate a criminal policy embodying the principle of individualisation as a method and reformation. Thus positivists introduced the methodology and logic of natural science in the field of criminology. With the predominance of positive school the emphasis was shifted from penology to criminology and the objects of punishment were radically changed inasmuch as retributory methods were abandoned. Criminals were now to be *treated* rather than *punished*. Protection of society from criminals was to be the primary object which could be achieved by utilising reformatory methods for different classes of criminals in varying degrees. It is in this context that positive school is said to have given birth to modern sociological or clinical school which regards criminal as a by-product of his conditions and experience of life. The positivists suggested elimination of only those criminals who did not respond favourably to extra-institutional methods. The exponents of this school accepted that there could be extenuating circumstances under which an individual might be forced to commit crime. Therefore, besides looking to the crime strictly from the legal standpoint, the judicial authorities should not lose sight of the circumstantial conditions of the accused while determining his guilt and awarding punishment.

The positive school differed from the classical school of criminology in the following manner :—

<i>Classical School</i>	<i>Positive School</i>
(1) This school defined crime in legal terms.	(1) It rejected legal definition of crime and preferred sociological definition.
(2) It placed reliance on free-will theory as an explanation of crime.	(2) It explained crime in terms of biological determination.



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| <p>(3) It believed in deterrent and definite punishment for each offence and equal punishment for all criminals committing the same offence.</p> <p>(4) It focussed greater attention on crime, namely, the act rather than the criminal.</p> <p>(5) The main exponents of classical school were <i>Beccaria</i> and <i>Bentham</i>.</p> <p>(6) It was a 18th century dogma which attempted to reform the criminal justice system in order to protect criminals against arbitrary discretion of judges.</p> | <p>(3) It advocated treatment methods for criminals instead of punishment and held that criminal be punished not according to gravity of his crime but according to the circumstances associated with it.</p> <p>(4) It laid greater emphasis on personality of the offender rather than his criminal act.</p> <p>(5) The main exponents were <i>Lombroso</i>, <i>Ferri</i> and <i>Garofalo</i>.</p> <p>(6) It was a 19th century doctrine which emphasised on scientific method of study and shifted emphasis from crime to criminal and from retribution to corrective methods of treatment.</p> |
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### Clinical School of Criminology

More recently, with the development of human psychology there is greater emphasis on the study of emotional aspect of human nature. This branch of knowledge has enabled modern criminologists to understand the criminal behaviour of offenders in its proper perspective. *Prof Gillin*, therefore, rightly remarked that the theory of modern clinical school on the side of criminogenesis presupposes offender as a product of his biological inheritance conditioned in his development by experiences of life to which he has been exposed from infancy upto the time of the commission of crime. Thus, clinical school takes into account variety of factors. It further suggests that the criminals who do not respond favourably to correctional methods must be punished with imprisonment or transportation for life while those who are merely victims of social conditions should be subjected to correctional methods such as probation, parole, reformatories, open-air camps etc. Thus briefly speaking, individualisation has become the cardinal principle of penal policy in modern penology. The main theme of clinical school is that personality of man is a combination of internal and external factors, therefore, punishment should depend on personality of the accused. This is known as correctional trend of reformation through individualisation.

### Sociological School of Criminology

Before concluding this discussion, a word must be said about the recent sociological school of criminology which seeks to locate causation of crime in social environment. As stated earlier, *Tarde* was the first to reject the anthropological approach of positivists and held that crimes were the outcome of human tendency to imitate others. Sociologists, however, carried their researches and attempted to co-relate variations in crime-rate to changes in social-organisation. They successfully established that other factors such as mobility, culture, religion, economy, political ideologies,

density of population, employment situations, etc., have a direct bearing on the incidence of crime in a given society. Placing reliance on these multiple causes, *Sutherland* sought to explain various processes through which a person becomes criminal. In his theory of *Differential Association* he suggested that human personality and culture are directly related and a person becomes a criminal mostly by the chain of circumstances in which he associates or moves. It is for this reason that sociological school has often been characterised as a rational school of criminology which recommends the application of humanitarian methods for treatment of offenders. The persons prone to criminality should be corrected through persuasive methods rather than traditional punitive methods. However, the advocates of recent 'multiple factor theory', while explaining causation of crime, contemplate that crime is a product of a great variety of factors which cannot be reduced into general propositions. In other words, no specific theory of criminal behaviour is ever possible. Thus crimes are caused due to combination of a number of factors or circumstances. But this view has been vehemently criticised by *Cohen* on the ground that the advocates of multiple factor theory have confused 'factors' with 'causes', of crime. He further states that it is erroneous to locate 'causes' of crime in the 'factors' because the latter can readily be eliminated without changing the social environment.

### The New Criminology

In recent years, there seems to have been a transformation of criminological views regarding somewhat sceptical question of criminal accountability. Modern critics attack the traditional criminological view on the ground that their search for characteristic differences between the class of criminals and the class of non-criminals rests upon erroneous assumption.<sup>1</sup> This false dichotomy has been based on a misconceived characterisation of criminals as 'criminal type'. As *Michael Phillipson* aptly observes that to take crime out of its social context and to try to explain it as a product of physical characteristics or mental deficiencies is a myth. He summarises his criticism of traditional criminology by suggesting that it contains four false assumptions, namely,—

- (1) that there are universal causes of crime,
- (2) that the human population can be divided into two groups, criminals and non-criminals,
- (3) that crime can be located by the study of individual criminals,
- (4) that the official statistics are indices of trends in crime.

The proponents of the new criminology attempt to explain criminality in terms of social conflict. *Engels* (1971) pointed out that resentment among the deprived class of society due to their exploitation and demoralisation was one of the reasons for growing criminality. Therefore, there was need to change the whole of the social and economic structure of society. Thus, new criminology attributes societal reasons for general criminality and suggests a pragmatic approach to the resolution of the problem.

The advocates of new criminology firmly believe that distinction

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1. 'Law And Society—The Crisis in Legal Ideals' edited by Kamenka, Robert Brown and Alice Tay, p. 81.



between criminals and non-criminals is the direct outcome of a mistaken notion of labelling certain individual offenders as 'criminal types'. Modern criminologists prefer to identify the criminal with a particular social type who has been a victim of well known inequalities between social classes, private wealth, private property, social power, and life chances. Thus there is nothing like 'criminal type' as suggested by traditional criminologists. The modern criminologists have succeeded in substituting the traditional belief regarding crime causation by social deviance as a cause of criminal behaviour.

It may be stated that modern criminologists lay greater stress on multiple causation theory because they consider crime as a social phenomenon, the political society reacting through punishment, treatment or preventive measures as the sequence of interaction is the ultimate object of criminology. They suggest that social control mechanism must be very selective in the legal norms for enforcement in their disposition of law violators. They advocate restructuring the existing social arrangements to eliminate crime from society.

The current theory of Indian criminal jurisprudence is based on seven fundamental notions, *viz.*, the principle of legality, *mens rea*, conduct, consequence of *mens rea* and conduct, harm, causation and punishment. With the change in time, the criminal law has radically changed and the concept of criminal liability, therefore, faces new problems.<sup>1</sup> Consequently, there is need for complete replacement of punishment by recent rehabilitative measures for certain categories of offenders so as to make the administration of criminal justice efficacious and meaningful.

It must, however, be realised that mere treatment of offenders in correctional institutions does not help in their ultimate rehabilitation as it does not ward off the stigma which the society attaches to the released inmates. Considered from this standpoint, the punishment of the offender does not end with the termination of his institutional incarceration but it continues as a life-long record, making it difficult for an offender to go back to the community as a decent law-abiding citizen despite his genuine and sincere efforts to lead an honest and up-right life. This problem can be effectively tackled by developing after-care services as an integral part of the correctional method of treatment of offenders. Unfortunately, this important aspect of rehabilitative process has remained, by and large, neglected in the present-day Indian penal system. Although there are some shelter-homes and after-care centres in certain States, but they are hardly sufficient to cater to the needs of ever-increasing number of released prisoners.

Before concluding, it must be stated that the modern trend in penology and sentencing procedures is to emphasise the humanist principle of individualising punishment to suit the offender and his resocialisation. The penal policy should be aimed at protecting the society by preventing crime. It must be accepted that punishment is institutionalised violence and it can be justified only when it deters the offender from committing the offence in future and also deters others from indulging in criminal acts. While choosing any system of punishment the intended effects thereof need to be considered very carefully. Unduly tough measures of punishment would lead to feelings

1. 25 JILI (1983) p. 579.

of resentment and rejection which would frustrate the very cause of penal justice. The punishment should be severe enough to deter but not too severe to be brutal. Likewise, it should be moderate enough to be human but not too moderate to be ineffective. It has to be so designed as to reform the offender and reclaim him as a law abiding member of the society. The focus of attention should be to make the offender realise that the offence which he has committed is not only harmful to the society of which he is an integral part, but is harmful to his own future as well. It is only then, that the true object of penology can be said to have been achieved.

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## CAUSATION OF CRIME

Crime has been a baffling problem ever since the dawn of human civilization and man's efforts to grapple with this problem have only partially succeeded. There is hardly any society which is not beset with the problem of crime and criminality. As rightly pointed out by Emile Durkheim, crime is a natural phenomenon which is constantly changing with the social change.

Criminologists have always differed in their views regarding crime-causation. Continental criminologists often support the endogenous theory of criminality which is founded on bio-physical consideration of criminals. The American criminologists on the other hand, are more inclined to explain criminality in terms of social factors. Thus, the former approach the problem of crime-causation subjectively while the latter are objective in their approach. The adherents of subjective theory of criminality try to examine the nature of the criminals besides other aspects of his personality. They believe that criminals differ from non-criminals in certain traits of their personality which develops unusual tendencies in them to commit crimes under situations in which others do not. They further argue that criminality is necessarily an expression of the unique personal traits of the criminal and, therefore, in such cases social situations do not offer a satisfactory explanation for criminal behaviour. This subjective approach to crime-causation has eventually led to the evolution of typological school of criminology which suggests that there are certain personality type of criminals who take to criminality because of their heredity, psychopathic and bio-physical traits. It is thus clear that subjective aspect of crime-causation includes anthropological, biological, physiological and psychiatric study of the offender as against the objective approach which insists on analysis of socio-economic, ecological, topographical and cultural environment under which crimes usually generate.

### Heredity and Crime

Lombrosian anthropologists through their biological and anthropological researches succeeded in establishing a correlation between heredity of the criminal and his criminogenic tendencies. The psychiatrists, on the other hand, located crime in mental depravity of the criminals. The psychologists explained crime in terms of personality deviations.

Lombroso was the first criminologist to correlate crime with the heredity of the criminal. His influence on contemporary criminologists was so great that they also accepted Lombroso's view that heredity was the sole cause of criminal behaviour of the offender. Lombroso asserted that there are certain criminals who imbibe criminality by birth. He called them atavists and held that such criminals were incorrigibles. He attributed this atavistic

tendency in them due to hereditary influences.<sup>1</sup> Modern researches have, however, shown that hereditary influences have little effect on criminality. As a result of persistent studies carried on in respect of identical twins in western countries, it is now well established that when twins are separated early in life and placed in different environments, they behave differently in their tastes and ways of life. This in other words, speaks of the strong-hold of environment and weakened effect of hereditary on crime-causation. To dispel this view it may further be pointed out that certain races, clans or tribes such as gypsies in western Europe are known to have indulged in criminality for generations. In India, the Kanjars and Lohars of Rajasthan and Baluchis are some of the nomadic tribes which habitually pursue criminal traits and take criminality as a mode of life. It may, however, be pointed out that it is not the hereditary instinct that motivates them to indulge in criminal behaviour but the real cause lies in the fact that they are brought up in the criminal environment and the influence of family surroundings on them is so great that they can hardly desist from criminal acts. Another reason for their criminal traits is society's distrust for them which makes them indifferent to social norms and they indulge in anti-social acts which are called crimes. The members of these tribes erroneously believe that they are not accountable to society and hence have no choice but to continue their criminal activities.

The tribal offences committed in Adivasi and tribal areas in India deserve a special mention here. They are mostly due to superstitious belief in witchcraft, petty quarrels, sexual indulgence and intoxication due to excessive consumption of liquor, especially in festive seasons. They are, therefore, the result of peculiar social-cultural conditions of the tribal-life and many a times the causes are petty and motives insignificant.<sup>2</sup> Thus it would not be correct to attribute criminality in tribals to hereditary factor.

Studies carried on by *Goring, Healy, Sheldon* and *Glueck* on heredity as a factor of crime-causation indicate that it is difficult to establish any possible co-relation between heredity and criminal-behaviour because it is practically impossible to isolate heredity factor from other environmental factors. The greatest merit of their researches, however, lay in the fact that they for the first time focused attention of criminologists on personality of offender which eventually paved way to adoption of reformatory methods for treatment of offenders in the field of penology.

It is significant to note that even *Lombroso* at a later stage modified his earlier views and suggested that only one-third of all criminals by nature are 'criminal type'. He argued that the other two-thirds were insane criminals which included idiots, imbeciles, paranoiacs, who suffer from alcoholism, epilepsy or hysteria etc. He preferred to call them occasional criminals. Such criminals are incapable of adjusting themselves to normal society. It is on the basis of this hypothesis that the mentally depraved criminals are classified into four categories under the English Mental Deficiency Act, 1913, namely :

- ✓ (i) idiots ;
- ✓ (ii) imbeciles ;

1. Sen. P.K. : Penology, Old and New, (1943) p. 50.

2. 26 JILI (1983) p. 617.



- ✓ (iii) feeble minded criminals ; and
- ✓ (iv) morally insane criminals.

The test of mental insanity essentially rests on the knowledge as to the distinction between right and wrong. This view has, however, been criticised on the ground that insanity does not affect merely institutional (immediate insight) factors but affects the personality of individual as a whole, including his desires and emotions.

It must be stated that *Lombrosian* theory equating propensity to commit crime with physical built-up has long been discarded. Even *Lombroso*, in his subsequent writings had accepted that his theory was too simplistic.<sup>1</sup>

### Mental Disorder and Criminality

The term 'mental disorder' is also referred to as mental abnormality. It denotes that the mind is in a state of confusion or is suffering from some disease. Studies have shown that there is no evidence to prove that the crimes committed by criminals were induced by their mental disorder. On the contrary, crime statistics showed that quite a large number of criminals were persistent offenders and more than 66 per cent of them had a past criminal record and 44 per cent of them had previously been in prison undergoing sentence.

Be that as it may, law does take mental illness or insanity into account while determining the criminal liability of the offender. It is also taken into account in sentencing offenders where they are subjected to clinical treatment rather than being sentenced. Insanity has been recognised as a defence in most penal laws.<sup>2</sup>

The rules recognising the defence of insanity in criminal law were first laid down in 1843 in the historic *M' Naghten's* case.

### M' Naghten's Rule of Criminal Responsibility

In *M' Naghten's* case<sup>3</sup> a political maniac who wanted to shoot Britain's Foreign Minister Robert Peel instead killed his Private Secretary Drumond on 20th January, 1843 in daytime. The killer was declared to be mentally insane by the medical experts. The case involved two important issues before the Court. The point raised on the one hand, was that an insane person is incapable of distinguishing between right and wrong, while on the other hand, the argument that public safety demanded that this plea should not be readily accepted as a defence to shield the criminal from penal consequences needed proper attention. After a careful consideration their Lordships found *M' Naghten* not guilty on the ground of his mental insanity. Their Lordships observed that every man is presumed to be sane and to possess sufficient degree of reason to be held responsible for his crime until the contrary is proved. In order to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a degree of reason from disease of mind, as not to know the nature and quality of the act he was doing, or if he did

1. Vold : Theoretical Criminology p. 38.

2. Sec. 84, I.P.C.

3. *R. v. M' Naghten*, (1843) 10 CL & F. 200.

know it, as not to know what he was doing was wrong.<sup>1</sup> Similar issues were raised in a subsequent decision in *Durham v. United States* (1954) where the accused was held not guilty for his criminal act because it was a product of his mental depravity.

The principal characteristic of insanity or mental disorder to be accepted as a defence is that the individual must be incapable of exercising any semblance of normal reasoning power and thus be unable to accept legal responsibility because he cannot appreciate the nature, quality or consequences of his act or because the act is not voluntary and has no *mens rea*.<sup>2</sup> The want of rational understanding therefore, justifies no responsibility under the criminal law.

There is yet another view about the mentally depraved persons. In certain cases, a person is intellectually capable of distinguishing between right and wrong yet he commits criminal act because of his irresistible impulse. This proposition, however, stands completely discarded after the decision in *M' Naghten's* case.

*Dr. Arnold* holds that *M' Naghten's* test of criminality is irreconcilable with the modern psychiatric insights. Modern trends in medical insight in criminological considerations accept the complexities of human nature and emotions. They regard insane persons as emotionally disturbed individuals incapable of being cured. The practical implications of this view find support in the present criminal law which accepts the basic weakness of an individual as a valid defence against his criminal prosecution or at least a sufficient ground for mitigation of his sentence to a certain extent.

In result, it has now been possible to link up mental disease as an explanation for crime. Aggressive personalities have often to face many problems because of their conflicts and overt acts due to their mental unsoundness. *Dr. E. A. Hooton* carried on intensive researches on insane criminals and concluded that they were inferior to civilians in nearly all their physical standards. To quote his own words, he observed : "criminals are originally inferior. Crime is the resultant of the impact of environment upon low grade human organisms". It follows that the elimination of crime can be effected only by the expiration of the physically, mentally and morally unfit, or by their complete segregation in a socially aseptic environment. *Dr. Hooton's* work, however, stirred up controversy and critical reaction. *Sutherland* criticised *Hooton's* view of constitutional inferiority of criminals on the ground of insufficient statistical evidence to support his claim.

It must, however, be noted that the distinction between mental deficiency and insanity has now become clear after the researches of *Jean Esquirol* of France and *Issac Ray* of United States of America. *Henry Goodard* undertook intensive psychometric tests to prove that more than 50% of criminals suffered from mental deficiency and they were unable to appreciate the consequences of their behaviour or the meaning of law. *Goring* also supported this view. It is now well settled that mental deficiency though not directly relevant, is indirectly related to crime causation.

To avail the defence of insanity under criminal law, the accused must

1. Kenny's Outlines of Criminal Law, (19th Ed.), pp. 82—83.

2. *R. v. Clarke*, (1972) 1 All E.R. 219.



be unable to know the physical nature and quality of his act. Thus, where A kills B under the insane delusion that he is breaking a jar,<sup>1</sup> or a mad man cuts the woman's throat under the belief that he is cutting a loaf of bread, these are clear instances of insanity.<sup>2</sup>

### Insanity under Indian Criminal Law

Under the Indian Penal Code, insanity has been accepted as a defence to a charge of crime. Section 84 of the Indian Penal Code gives immunity from criminal liability to a person, who, by reason of unsoundness of mind, is unable to know the nature of the act or is unable to know that what he is doing is "either wrong or contrary to law". In recognising such a state of mind on the part of the accused as a complete defence to criminal responsibility, the law postulates that it is futile to punish a person who does not know the nature of his act, or that what he is doing is either wrong or contrary to law. "The mind, in the real sense, does not accompany the physical act. To punish the conduct of such a person would be abuse of law without any practical utility. If a person does not possess knowledge about the nature of the act, then he will not appreciate what he is being punished for. And, if he does not appreciate that much, then the objective of punishment will not be achieved. In fact, punishment is intended to act on the mind of the person punished and to alter the direction in which his mind has been working so far. If the mind was not in substance a party to the conduct, then the question of changing the direction of mind cannot arise."<sup>3</sup>

In cases where the defence of insanity is set up under Section 84 of I.P.C., it is material to consider the circumstances which have preceded, attended and followed the crime; whether there was deliberation and preparation for the act, whether it was done in a manner which showed a desire to concealment of consciousness of guilt and whether the accused made any efforts to avoid detection and whether after arrest he offered false excuses or made false statements etc.<sup>4</sup>

Where in the morning the accused behaved normally, went to and came from his office alone, wrote an application for leave and at 01.45 p.m. killed a child and stabbed two others and on his arrest soon after 2.45 p.m. gave normal and intelligent answers to the Investigating Officer, it was held that the accused was not insane at the time of commission of offence and therefore cannot be allowed the defence of insanity under Section 84 of I.P.C.<sup>5</sup>

The Supreme Court in *Paras Ram v. State of Punjab*,<sup>6</sup> held that the ceremonial beheading of a four year old boy by his father or relatives to propitiate some blood thirsty deity, does not show or prove insanity of any kind.

In *Meh Ram v. State*,<sup>7</sup> soon after the incident the accused was behaving normally and was talking coherently and admitted having killed the

1. Stéphen : Digest (8th Ed.) p. 6.

2. Kenny's Outlines of Criminal Law p. 76.

3. Prof. P. M. Bakshi's article 'Limiting the Criminal Liability' 36 JILI (1994) p. 153.

4. *State v. Chotelal*, AIR 1959 M.P. 203.

5. *Jai Lal v. Delhi Administration*, AIR 1969 SC 15.

6. (1981) 2 SCC 508.

7. 1994 Cri. L.J. 1897 (Raj.).

deceased as he thought her to be an evil spirit and there was no previous history of mental illness. The plea of insanity was, therefore, not available to the accused.

Where the accused who had committed gruesome murder of two ladies without any reason or motive, had some previous history of mental illness and it was in evidence that he was not behaving normally at the time of his arrest and had suffered an attack of insanity during investigation, the defence of insanity under Section 84 of I.P.C. was held to be applicable in his case.<sup>1</sup>

In *Tolaram v. State of Rajasthan*,<sup>2</sup> the accused at the time of commission of the act knew the nature of the act he was committing and on noticing the witnesses coming towards him made an attempt to leave the house by jumping from a wall on an adjoining house, the plea of insanity was rightly denied to him.

### **Bio-physical factors and criminality**

Biological differences in human personality also account for criminality in human beings. The logic behind biological explanation of crime is that structure determines function and persons behave differently owing to the fact that they are somehow structurally different. The physical and biological abnormalities are generally responsible for criminal behaviour. In other words, the criminal is viewed as a biological organism characteristically different, abnormal, defective and inferior, both biologically and physiologically.

The physio-biological explanation of criminal behaviour inspired *Prof. Franz Joseph Gale* to develop the doctrine of phrenology showing relationship between head conformation and personal characteristics of a person. He first published his work on this topic in 1791. His disciple *John Gapsler Spurzheim* carried this doctrine to England and United States in early twenties of nineteenth century.

An American criminologist *Dr. Caldwell* showed keen interest in phrenology and published his 'Elements of Phrenology' in 1824. The doctrine underlined three basic propositions :—

- (i) the exterior of the skull conforms to the interior, and to the shape of the brain ;
- (ii) the mind consists of faculties ; and
- (iii) these faculties are related to the brain and skull.

*Dr. Caldwell* emphasised that sentiments control the propensities and are aided by will to govern the whole conduct or act of a person. Thus 'will' and 'spirit' were supreme in controlling the human behaviour. The theory has, however, been disapproved being purely hypothetical in nature and has now fallen into disuse.

Bio-chemical researches have tried to show that hormonal imbalances have an adverse effect on criminality. In other words, hormonal imbalances affect the thinking power of the brain and control over nervous system and this may lead to criminality. But the general consensus does not accept these

1. *Niman Sha v. State of M.P.*, 1996 Cr. L.J. 3395.

2. 1996 Cr. L.J. 8 (Raj).



findings. The more accepted view is that hormonal imbalances may act as catalyst for criminal behaviour and provide a favourable biological environment for crime causation but criminality cannot be attributed to these imbalances alone. However, imbalances in sex hormones does affect human behaviour. Particularly, great hormonal changes usually occur in women just before and during menstruation period commonly referred to as PMT and MT.

Likewise, physiological factors such as age, sex and certain endocrinal imbalances also seem to have a correlation with the criminality of offenders. Adolescents and juveniles are more prone to offences like stealing, vandalism and sexual assaults as they readily fall a prey to the urges of sex and other lustful activities because of their tender age. The offences of theft, gambling, drunkenness, breach of traffic rules etc., are more common with young persons who are normally between the age group of 18 to 30 years. This is probably because of the fact that these offences involve considerable display of courage, boldness and adventure which these young persons normally possess. Persons advanced in age and experience are more prone to offences like white collar crime, fraud, cheating, embezzlement etc., because the nature of these crimes require maturity of mind and tact to handle intricate situations in case of detection.

### Intelligence Testing and Crime

One of the distinguished French psychologists *Alfred Binet* (1857-1911) carried out experiments in psychological laboratory on the persisting problem of retardation due to individual differences and introduced the concept of 'Mental Age' and 'Intelligence Quotient' (IQ) and its influence on criminal behaviour.

There are two distinct types of mental defect, namely, amentia and dementia. Amentia literally means lack of mind and describes a person who is born with a low intellect. Dementia, on the other hand, refers to someone who once had a normal intelligence but later lost it because of some disease, decay or accident. These definitions provide guideline to decide which persons need treatment or help and law deals with them accordingly.

Robinson has suggested that retarded persons may be grouped as (i) mildly; (ii) moderately; (iii) severely; and (iv) profoundedly retarded persons. Criminality is mostly attributed to person with retarded intellect and not with severely or profoundedly retarded ones.<sup>1</sup>

*Prof. Jerman*, an American psychologist worked further on the researches of *Alfred Binet* and observed that the idea of 'mental age' is basically sound common sense in the children. On an average, a child of twelve years age can comprehend and tackle more difficult and abstract problems than an average young person. The same is equally true for other ages as well. With each year of age, ability continues to grow and develop constantly. Thus Intelligence Quotient (IQ) is simply the ratio of Mental Age (MA) divided by chronological age (CA) multiplied by 100 for each of numerical representation. Thus, the formula for determining Intelligence Quotient is :—

1. Robinson H.B. & Robinson N.M. : Mental Retardation (Ed.) p. 77.

$$IQ = \frac{MA \times 100}{CA}$$

Scientific researches have established a definite link between intelligence and criminality. They have discovered that delinquents on an average had an IQ eight points lower than non-delinquents. It has also been proved that IQ is not necessarily related to hereditary factors but the environmental factors too affect individual's I.Q.

It has, however, been accepted that age of sixteen years be assumed to represent the level of full mental development beyond which additional years do not bring additional ability.

As to the inter-action of sex in incidence of crime, it may be mentioned that there are certain crimes which are peculiar to a particular sex. Thus, illegal abortions are commonly resorted to by women. So also the offence of shoplifting is more common with women than men because the former can escape frisking even though suspected of this offence. Conversely, crimes such as homosexuality, house-breaking, embezzlement etc., are rarely committed by women.

*Gillin* suggests that physical abnormalities in criminals drive them to commit crime. *Prof. Smith* also supports this contention and holds that there are certain abnormal personalities in whom the endocrine glands are functioning abnormally and this mal-functioning of the endocrinal-glands causes them to commit certain types of crime. Thus sexual incapacities of a person may result into his failure to mature socially and out of sheer disgust and frustration he may resort to criminality. Contrary to this, excessive sex desire may cause one to indulge into prostitution and commit crimes such as rape, kidnapping or drug addiction and similar other offences. Again, physical over-development of young girls becomes a cause of sexual attraction for males thus leading to sex delinquencies. Commenting on this point *Prof. Gillin* rightly observes that 'oversize of both the sexes tends to make the child conspicuous among his play-mates and set a stage for abnormal conduct'.

Of late, explanation of criminal behaviour in terms of glandular mal-functioning has been a subject of criticism by endo-criminologists. It has been suggested that many persons indulge in criminality despite normal functioning of their endocrine gland while there are others who suffer from serious glandular abnormalities yet they never resort to deviant behaviour.

### **American View on Personality Aspect of Criminals**

While discussing personality-type of criminals, a word must be said about the work of *Earnest A. Hooton* which is regarded as a major contribution to the school of constitutional criminology. *Hooton* was an anthropologist of Harvard University who published his book "*Crime And The Man*" in 1939 after an intensive twelve years' study. He seemed to vindicate *Lombroso's* anthropological findings about criminal behaviour and disposed of *Goring's* study as unscientific. *Hooton* attempted to show that crime and other anti-social behaviours are due to physical and social factors. After an intensive study of prison inmates he concluded that prisoners differ from non-criminals in various physical particulars that composed definite pattern of physical inferiority. *Hooton's* work was, however, criticised by



sociologists, criminologists and anthropologists and characterised as an outcome of his deep rooted prejudices against the criminals. He was also criticised for excluding white collar criminals who are admirable mental specimen in many cases and biologically superior.

Yet another social scientist, *William H. Sheldon*, tried to establish a co-relation between physical structure of the criminal and the crime through what he called the application of constitutional theory to human behavioural problems. He developed his ideas from the fact that life begins in the embryo which is made up of three different tissue layers, namely, an inner layer called endoderm, a middle layer known as mesoderm and an outer layer or ectoderm. He correlated a corresponding physical and mental typology consistent with the known facts from embryology and the physiology of genetic development. He pointed out that physiologically, the endoderm gives rise to the development of digestive viscera, the mesoderm to bone, muscle and tendons of the motor-organ system, the ectoderm to connecting tissues of nervous system, skin and related appendages. He summarised the basic characteristics of physique and temperament of these types of physical structures as follows :—

- (1) *Endomorphic structure*.—They are persons with fatty or bulky body having short tapering limbs, small bones, soft and smooth skin and are usually of a mild temperament and comfortable persons.
- (2) *Mesomorphic structure*.—Persons with such structure are strongly built with prominent muscles and bones and connective tissues. They have heavy chest and large wrists and hands. These persons are temperamentally somotonic, active, dynamic, assertive and behave aggressively.
- (3) *Ectomorphic*.—Persons with ectomorphic structure are constitutionally lean and fragile with delicate body, small face, sharp nose and fine hair. They are sensitive by temperament and avoid crowds.

*Sheldon* further asserted that these physical structures were directly related to temperament of the person who committed crime. Thus according to him, endomorphics were moody and accommodative by nature while the mesomorphics had a rigid and somewhat 'serious' temperament. The ectomorphics, on account of their delicate physical built-up, are often shaky in their decisions and are short tempered. He attributes criminality to endomorphics and mesomorphics rather than the ectomorphics. But this analysis of *Sheldon* has been criticised by *Sutherland* on the ground that it closely resembles the heredity considerations of criminals which has lost its significance in modern criminology.

While discussing the personality aspect of the criminal *Donald Taft* lays emphasis on the effect of intelligence and its impact on crime causation. He asserts that persons lacking in average intelligence are generally not aggressive, anti-social or sexually promiscuous, but are rather inactive and timid. They easily lend into criminality because they cannot foresee the possible consequences of their acts and are unable to adjust to the complexities of modern life. Their incapability to distinguish between right and wrong or to foresee the danger of detection is yet another cause of their

criminal behaviour.<sup>1</sup> But it has been sufficiently established by now that feeble-mindedness forms a very small proportion of delinquencies and in fact crimes are mostly committed by persons of considerable intelligence and sharp outlook.

### Freud's theory of Criminal Behaviour

Psychopaths contend that offenders lend into criminality on account of functional deviations and mental conflicts. Sigmund Freud (1856-1939) explained mental conflicts in the personality of criminals in terms of 'id', 'ego' and 'super ego'. He asserted that 'Id' generates basic biological and physiological urges and impulses in a person such as sexual desire, hunger, affection for kith and kins, lust for power etc. while ego refers to the conscious personality of which the individual is aware. That is to say, although the desire for sex pleasure and hunger are basic urges of a person yet he is all the time conscious that only the righteous means to fulfil these desires protect his personality and any deviation from the normal course shall cast aspersions on his personality. Super ego according to Freud is the force of self-criticism and control inherent in every person. Thus there is a constant conflict between 'Id' (basic urges of men) ego and super-ego. Freud, therefore, contends that crime is the substitute of symbolic behaviour of a person. Thus the desire for committing suicide (self-murder) is out of the feeling of inferiority, frustration, depression or anxiety. Again, theft is committed out of the sense of financial inferiority and to get rid of the feelings of spite and dependence etc.

According to Freud, the ego does not exist at birth, but it is something the individual learns. For example, a baby learns that it is fed only after crying and child learns to say 'please' in order to obtain thing which he wants. Gradually 'ego' develops and starts controlling the temper i.e., id.

The super-ego is largely part of the unconscious personality. It is the conscience which exists in the unconscious areas of mind. The super-ego thus characterises the fully socialised and conforming member of society. It is the impact of moral and ethical attitudes of parents with whom the child has his or her earliest contacts and relationships which helps in formation of the super-ego.

Thus, it would be seen that id demands pleasure, while the super-ego demands control and repression and both push ego towards its own. As a result of this, there is conflict which is difficult to resolve. Where the super-ego in a child is not well developed, he is likely to be drawn towards delinquency. Freud postulated that the failure to develop super-ego was generally the result of parents being unloving, harsh or absent during the child's upbringing. It is for this reason that socialising processes had failed to work on those children whose latent delinquency had become dominant; the children were, therefore, dis-social, if not anti-social.<sup>2</sup>

Psychologists also recognise that other factors such as relationships with persons outside the family and general social environment can also affect the formation of super-ego. If super-ego is over-developed, it may lead to

1. Taft : Criminology (4th Ed.) p. 94.

2. Freud Sigmund : A General Introduction to Psycho-Analysis (1935) translated by John Riviere (New York) p. 232.



guilt feelings or neurosis.

*Adler* attributes criminal behaviour to inferiority complex and observes that crime is an overt compassion for a deep feeling of inferiority, which is often the result of distrust or neglect of child by the parents.

Another psychiatrist, *Eleanor Glueck* also founded his theory of criminal behaviour on personality deviations. He worked out a Prediction Table comprising three main aspects of human personality :—

- (1) the social background of the criminal ;
- (2) his personality traits ; and
- (3) his psychiatric conditions.

*Dr. Glueck* observed that abnormalities in a person are the root cause of criminality. He preferred to call these abnormalities as personal deviations. It was, however, subsequently realised that these theories do not offer a satisfactory explanation for certain crimes such as gambling, prostitution, vagrancy, drug addiction, violation of traffic laws, etc. These offences are satisfactorily accounted for by the sociological considerations.

### Psychological concept of crime

Psychology includes within it the study of mind and behaviour attitudes etc. It is the study of individual characteristics such as personality, reasoning, thought perceptions, intelligence, imagination, memory creativity and so on.

Psychologists treat crime as a behaviour learnt by the criminal in course of his contact with different persons. Thus like sociologists, they seek to explain crime in terms of environmental circumstances.

As stated earlier, *Lombroso* attributed criminality to *atavism* which meant that criminals have savagery ancestral history and criminality in them is hereditary. Similar assertions were made by *Goring* who pointed out that criminalistic traits in criminals are imbibed by heredity and through instinctive patterns and, therefore, environmental conditions are of little importance. Subsequent researches by psychologists and sociologists have, however, demonstrated beyond doubt that it is not the heredity but the psychological influences operating in delinquent families that makes one criminal. The child unconsciously imbibes criminalistic traits from the family background of the delinquent parents and subsequently turns into a confirmed criminal. Also, children who are removed away from their parents at an early age tend to follow criminality for want of proper parental care and lack of affection which develops the feelings of inferiority complex, frustration and humiliation in them. Thus, it has been rightly commented by *Sutherland* that the resemblance between father and son as regards criminality is not due to contagion but it is because of peculiar human psychology of learning things, observation and association that makes them follow criminal behaviour if placed in circumstances which are conducive to crime.<sup>1</sup>

The theory of learning which *Sutherland* prefers to call as differential association, asserts that crime is learnt in association with others. It is clearly connected with *Tarde's* theory of imagination, that is, all men tend to

1. *Sutherland & Cressey : The Principles of Criminology (6th Ed.) p. 100.*

imitate each other, the extent of imitation, however, depending upon how close are their contacts. He stated that lower classes tend to imitate the upper classes and so is the case with the followers who imitate their leader's behavioural pattern. And it is in this process of learning and imitation that a person gets involved into criminality. Thus, the central hypothesis is that crime is not invented by each criminal separately but like all other forms of behaviour, it is learnt from direct contact with other criminals. The behavioural learning takes place through personal contacts with other people.

Psychological researches on teen-age violence have shown that violent careers develop along two main paths. Sometimes children start violence early before puberty. They are more likely to become chronic, violent offenders. More commonly children who turn to violence in adolescence mend themselves sooner or later. The reason for violence may be birth complications, poverty, anti-social parents, poor parenting, aggression, academic failure, psychological problems, alienation from home, school etc.

### Aristotle's Four Laws of Association

It shall be pertinent to mention here the four classical laws of association which the great Greek Philosopher *Aristotle* enunciated centuries ago. He stated that (i) similarity, (ii) contrast, (iii) succession in time and (iv) co-existence have a close bearing on the psychological concept of crime. Each of these factors greatly influence the behavioural pattern of the criminal.

As to the law of similarity, *Aristotle* holds that persons following similar criminal traits come closer and associate themselves into bigger gangs. Again, the beginners learn patterns of their seniors and associate themselves with their criminal activities. Thus the psychological tendency to act in a similar way by observing or imitating the behaviour of others can make persons follow criminality in life. Likewise, contrast between criminals and non-criminals as to their association and behaviour also leads to strifes and clashes which ultimately aggravate crime. Speaking about the laws of succession in time, *Aristotle* suggests that human conduct is a phenomenon that persists through unbroken links. That is to say, various behavioural norms are followed from generation to generation in succession. Although with the change in time and circumstances these patterns may undergo a change, nevertheless, their basic values remain unchanged. *Aristotle* asserted that criminality is one of such norms which has been continued all over the world from ages although in varying degrees with changes in time and place. Finally, he stressed that it is the desire for co-existence which causes delinquents to form their associations for helping each other in their criminal pursuits. Evidently, these trends have psychological effect which leads a person into criminality.

Psychological depravity in a person due to his physical defects and incapacities also have an important bearing on criminality. Thus, persons who are deaf, dumb or those who suffer from white spots, eye-squints and other physical deformities meet disgust and ridicule thereby suffer loss of social status hence they tend to commit crimes more frequently.<sup>1</sup> Likewise, persons with ugly look and dark complexion also tend to behave criminally

1. Healy William : The Individual Delinquent, p. 218.



and mostly indulge in sexual-offences because of the inferiority complex in them which makes them think that they are being neglected by fair sex due to hatred and indifference. This generates in them a feeling that they are out-caste and their dissatisfaction, revengeful attitude towards women and irritation instigates them to resort to criminal acts in an effort to achieve what they could not otherwise get through legitimate means. Conversely, girls with masculine features or offensive complexion are ridiculed not only by the males but also their own womenfolk and, therefore, they deviate from their normal ways of life and do not even hesitate to indulge in sex-crime in an effort to overcome their inferiority complex.<sup>1</sup>

Besides the physical defects, failure in competitions or unsuccess at the examinations and strained marital relations also affect sensitive persons psychologically and they become so desperate that they do not even hesitate to throw themselves into criminality in an attempt to forget their unpleasant experiences in an attempt to escape from the realities of life. Frustration causes emotional disturbance in them and aggression eventually culminates into delinquency. Attempted suicides, alcoholism, assaults, homicides and many similar offences are often the outcome of this psychological trend of criminals who are not bold enough to face the hazards of life. The problem of securing suitable match for unmarried girls in India has become a social problem these days, with the result girls remain unmarried till a very late age. Consequently, their psychological urges on the one hand and the sense of being a burden on the family on the other, upsets their mental equilibrium and those who cannot resist their passion quite often indulge in prohibited sex exchanges and thus fall an easy prey to criminality.

Another remarkable feature regarding psychology and its relationship with criminality is that males are more prone to criminality than females. The percentage of women delinquency in India and elsewhere is far lower than those of male offenders. Commenting on this point *Sutherland* observes, "those variations are probably because of the difference in the social position of the girls and women as compared to boys and men. The girls are brought up and supervised most carefully and taught what must be nice while the boys are taught to be rough and tough and the boy who adopts the behaviour of girls is regarded as 'sissy' among his fellow boys and laughed at".<sup>2</sup> It appears that this variation in sex-ratio in crime is due to the fact that girls and women predominantly play the role of housewives while the male members play the masculine role of supporting and protecting the family.

Like alcoholics, narcotic drug addiction is also regarded as one of the psychopathic traits of criminal behaviour. *Lindsmith* observed that a man may start using narcotic drugs for two obvious reasons. He may start it out of sheer curiosity or observance of folkways or he may initially start using them as a medicine for his ailment and subsequently get addicted to it due to prolonged use. These addicts suffer distress when the supply of drugs is withdrawn and often resort to violence in an attempt to secure the dose. Moreover, drug addiction produces physical and mental deterioration and the addicts frequently resort to crimes such as theft and vagrancy to secure

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1. *Ibid.*

2. *Sutherland & Cressey : The Principles of Criminology, (6th Ed.) p. 115.*

money for procuring drugs. That apart, addicts too often associate themselves with the underworld characters and pick up criminal tendencies for acquiring the supply. Thus unknowingly they lend into criminality without any real intention on their part to become criminal.

### Conflict Theory of Crime

*Sellin* wrote about his conflict theory in 1938 and asserted that culture conflict emanates from conflict of conduct norms, where each separate culture sets out its own norms i.e. rules of behaviour to be instilled into its members. In a homogeneous society these are enacted into laws and followed by the members of that society because they consider them to be right. However, where the society is heterogeneous, this does not occur and culture conflict is bound to arise.<sup>1</sup>

*Vold* was also one of the proponents of the conflict theory of criminal behaviour. He argued that people are naturally group oriented and those who have same interests come together to form a group in order to carry forward these interests. The central theme of *Vold's* theory is that different groups have different and often incompatible interests which gives rise to conflicts. Where groups have a similar strength, then they often resolve their conflict by compromise thus lending stability to society. But, if the groups are of differing strength, the powerful one dominates which creates frustration and feeling of discontent among the weaker group which eventually leads to crimes. Thus, crime according to *Vold* is not the result of abnormality, but it is rather a natural response to an attack on the way of life of the deprived or weaker group.<sup>2</sup>

It may, however, be noted that psychological conditions are not directly instrumental for causation of crime. The true explanation of criminal behaviour must apparently be found in social interaction in which the behaviour of a particular person and prospective conduct of other persons play a significant role. In this context a reference to *Sutherland's* theory of *Differential Association* as an explanation of crime-causation seems inevitable as it extends positive support to the impact of psychological traits on incidence of crime. Considering the structural aspect of human association, *Sutherland* suggested that social organisation consists of three main groups, viz., one supporting the criminal activities, the other remaining neutral to criminal circumstances while the third acting anti-criminal. He further observed that the differential association in human organisation is a logical consequence of the principle of learning by association which is more or less a psychological phenomenon. *Sir Walter Reckless* has also supported this view and holds that although the responsible and irrationals do commit crimes incidently yet much of the criminality is due to a chain of circumstances.

It is often argued that *Sutherland's* theory of differential association as an explanation of crime-causation has only a theoretical significance because it lacks reality. Alternatively, the conflict theory of crime which considers crime as a minority group behaviour such as juvenile gangs, prostitute houses, gambling dens, etc., places reliance on psychological trends of

1. Sellin Thorsten : Culture Conflict & Crime (New York) p. 47.

2. Vold G. B. : Theoretical Criminology (Oxford Press) p. 109.



human behaviour in relation to crime. Thus the political offenders in their quest for power commit only the crime of political nature such as sabotage, rebellion, unlawful assembly, riots, etc., and psychologically respond negatively to other types of crimes which relate to property and other monetary gains. The anti-governmental activities of certain parties in India are a glaring illustration on the point. Their sole object is to oust the government in power due to the differences with its political ideologies. Secondly, the intensive industrialisation in India has given rise to frequent clashes between the management and the labour unions resulting into destruction of property, strikes, lock-outs, gheraos and other pressure tactics which are unlawful and offensive in nature.

Yet another significant interaction of conflict theory of crime particularly with reference to India can be located in the deep-rooted caste differences and communal hatred between the members of different communities. The Hindu-Muslim riots and tensions are common in Indian society.<sup>1</sup> The mass-massacre, during partition of India in 1947 and the incidents of arson, looting, rape and murders were the outcome of sheer hatred between the two communities, namely, Hindus and Muslims who lived together peacefully in this country for generations. These conflicts and differences are obviously psychological in nature, particularly when the other minority communities are being amicably accommodated in India.

The mass-massacre and bloodshed in Punjab caused by the Sikh terrorist activities during 1984-87 and the disturbances in Delhi following the assassination of Smt. Indira Gandhi the Prime Minister of India, on 31st October, 1984 further bear testimony to the fact that ideological and communal differences which are purely psychological in nature, too often lead to, heinous criminal acts. The mass-massacre and disruptive activities of LTTE, Tamil rebels in Sri Lanka which are being carried on unabated for the preceding more than ten years may also be cited to support contention that regional and linguistic consideration may also lead to ghastly crimes at the instance of a handful of psychotic persons.

Mention should also be made about the historic Deoria Sati incident which occurred in the State of Rajasthan on September 4, 1987. This unfortunate incident created a situation of confrontation between the protagonists who supported the practice of Sati on religious grounds whereas the people in general as also the Government is opposed to this evil practice because it is against public policy and is an act of barbarism. It is submitted that Sati, namely, the burning of women on the pyres along with her deceased husband cannot be permitted in any form in the modern age because it is not only unethical but also inhuman and even unlawful. In the words of *Justice V.R. Krishna Iyer*, the eminent jurist and former Judge of the Supreme Court of India "Sati is a criminal phenomenon.....it is murder most foul of Indian women by cultural coercion and the ghastly sanction of incineration." It is for this reason that the Parliament had to

1. The Hindu-Muslim riots in Jamshedpur and Aligarh in 1979 ; Meerut in 1982 ; Babri Masjid demolition at Ayodhya in December, 1992 ; the Bombay Blast in January, 1993 followed by riots in Surat and Ahmedabad; Godhra Train Burning incident of 27th March 2002; Best Bakery Firing in communal mob-violence killing, 12 persons on March 1, 2002 are some of the illustrations on the point.

come out with deterrent legislation against the practice of Sati,<sup>1</sup> in 1987 providing death sentence for abetment of this offence. The law seeks to make glorification of Sati as an offence punishable with a minimum imprisonment of one year which may extend upto seven years and also a minimum fine of Rs. 5,000/- and a maximum of Rs. 30,000/-.

It is important to note that a struggle constantly persists between the law-breakers and the law-keepers—that is the criminals and the police. Clashes between them quite often provide a psychological basis for generating crime. With the stiff attitude and drastic measures of the police, the criminals become more furious, violent and aggressive. This ensues face to face fights between the two with the result there prevails a reign of terror which in turn becomes a patent cause of violence and disorder.<sup>2</sup> That apart, with the improved techniques of crime-detection, the criminals have also modernised their methods of committing crime so as to escape the chances of detection and arrest.

It must be stated that conflicts generally arise from misunderstanding, lack of understanding, clash of interests, gulf between the views or beliefs of persons or parties, suspicion, lack of justice, fair play or honesty, intolerance and violence and lack of rapport, love, and cooperation etc. Once the conflicts arise and not quickly resolved, the situation leads to confrontation, social instability, disaffection and lawlessness which finally culminates into violence and criminality. It is, therefore, in the interest of the society that the causes of tension and conflict be eliminated and if they do arise, they must be resolved at the earliest. This is perhaps the best way to mitigate crimes.

### **Gender-based Explanations of Female Criminality**

It is true that women in the past were less likely to indulge in criminality as compared with the present time and criminality was characterised as predominantly a male activity. Even the crimes which are traditionally attributed to females either remained undetected or if detected, were leniently dealt with. But with the advance of criminological researches some behavioural scientists have tried to offer explanation for growing criminal behaviour of females on the basis of biological, physical, psychological and geneticological theories.

*Dr. Sutherland* refers to the innate trait of women which suggests that they are more law abiding as compared to their male counterparts because they are excluded from the dominant role of bread-earner and other masculine activities. But the fact remains that these behavioural

1. The Commission of Sati (Prevention) Act, 1987.

2. The Anti Reservation stir of Gujarat during February—June 1985, which resulted into killing of hundreds of innocent lives and destruction of property is an example on the point. The anti-reservation agitation opposing implementation of Mandal Commission's Report throughout India in August 1990 is also an illustration to support this contention.

The Pakistan supported militants and terrorists groups who are constantly creating tensions and disorder throughout Jammu and Kashmir State by resorting to violence and mass killing of innocent people for the past so many years frustrating Indian Governments' efforts to restore normalcy in the valley is yet another example of the conflict between law-breakers and law-keepers.



explanations have not provided any plausible answer to the question of female criminality nor do they explain why females are more conforming than men. It is, however, generally accepted that female criminality is more damaging to the wider society and perhaps this is the reason why criminal justice system treats women lightly in matters of punishment. In prisons also women prisoners are often assigned the role of mother or housewife to inculcate in them domestic rather than vocational skills. Even today, the general assumption about female criminality is that women are less likely to be suspected of crime, when suspected they are less likely to be charged and prosecuted and finally if prosecuted, they are less likely to be convicted.<sup>1</sup>

### **Group Therapy**

The greatest impact of psychological factors in the field of criminology can be evinced in what has been known as Group-therapy which the modern correctional institutions have adopted for the treatment of criminals. Experience has shown that isolated life of criminals in jails and prisons makes them psychologically more violent, revengeful and indifferent towards society. The isolated, dull and monotonous institutional life in prison kills the personality of the offender and at the same time it is an unproductive endeavour for the State. Therefore, more recently an attempt has been made to approach the inmates psychologically and this has eventually led to the evolution of the system of Group-therapy in prisons and correctional institutions.

The relatively new technique of group-therapy is based on the principle of self-help. It seeks to reform the inmates and prisoners by offering them an opportunity to form themselves into small groups of ten to fifteen in number and discuss their problems mutually. It emphasises on securing adjustment of inmates through the process of normal learning. Originally, the system was confined only to mentally abnormal inmates who were unsuited for individual treatment, particularly during the World War I. These criminals were formed into clinical groups and thus relieved of the rigours of social isolation. It offered them an opportunity to create a friendly and supportive atmosphere. Later on, the method of group psycho-therapy was extended to prisoners and inmates in reformatories. The principle underlying this system is that if these inmates get an opportunity to express and discuss their problems freely, they can gain emotional control over themselves and thus avoid tensions and conflicts. It has rightly been commented that guided group interaction through group-therapy gives inmates a meaningful social experience.

Considered from the psychological standpoint, group-therapy enables the inmates to face the realities of life and shed off their frustration and guilt. With an opportunity to discuss their problems mutually in a free atmosphere and analysing the arguments of others, they prepare themselves to accept social norms and conform to social values of life by avoiding delinquent acts. Thus the system of group-psycho-therapy inculcates a sense of loyalty, responsibility and faith among criminals and helps them to return to non-criminal world.

Besides group-therapy, the inmates in reformatories, correctional homes

1. Katherine S. Williams : Text. Book on Criminology, (2001) pp. 490-91.

and other clinical institutions are treated psychologically for being rehabilitated into normal society.

Despite above generalisations regarding the influence of hereditary, anthropological, psychopathic and psychological factors on crime-causation, it must be pointed out that these factors have failed to explain certain 'personality-type' crimes such as drunkenness, vagrancy, begging, prostitution, violation of drug-laws and many other similar offences. Obviously, these types of crime do not respond favourably to the subjective approach to crime-causation for reasons stated below :—

- (1) These offenders look to the facts of changing world in the light of the changing views about different type of crimes. Thus present non-seriousness towards these personality type crimes is due to the fact that though they are regarded as crimes, being against the accepted norms of morality and culture, the moral condemnation for them is receding fast. We already see that the offences of begging, gambling and drinking have now become so common in the Indian society that we have rather begun to forget that they are crimes at all. The tendency on the part of men, women and even children to stake money in 'satta' although unlawful, has become common these days. This indicates that human reaction to such anti-social behaviour is rather unstable and changing. This contention finds support in the disappearance of blasphemy as an offence. The social legislation legalising abortion<sup>1</sup> also supports this view.
- (2) These criminals escape realities of life and commit crime as a substitute for their failure and personal incapacity. The cases of homo-sexuality can be cited in support of this contention. Those who resort to liquor and other drug-addictions fall under this category.

In order to reduce crime-rate many countries avoid to provide legal definition of personality-type crimes though they do not really mean to encourage such delinquent acts. Thus they inject indirect influences of custom, convention and standards of good taste in their legislative measures which are based on self-approval. To quote an example, prostitution is not an offence under the penal system of Denmark nevertheless it cannot be carried on in public places. Again, the use of alcohol is free in that country though it is supplied on permits. Of late, many western countries have shown their preparedness to remove homo-sexuality as an offence from their Statute Book for similar reasons, though they insist that it should not be committed in public places.

An analysis of these 'personality-type' crimes reveals that certain socio-economic conditions associated with these offences are the real cause of their recurrence. Thus, many persons resort to gambling and begging as they find it a profitable profession which does not involve any labour or work. So also certain women embrace prostitution as an easy means of livelihood.

Another remarkable feature of these personality-type crimes which do

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1. Medical Termination of Pregnancy Act, 1971.



not respond favourably to the bio-physiological considerations is that there is always an element of specific cultural behaviour corresponding to a similar criminal activity. Thus wagering and gambling are not allowed under the law but risk taking in commercial adventures is freely tolerated despite the fact that it is also of a gambling nature. Similarly, begging for personal gains is unlawful although it is permissible when practised for charitable purposes and raising donations etc. Again, sexual indulgences for monetary consideration is a crime prohibited under the law but making profitable marriage is not an offence.

In conclusion it may be summarised that though biological, anthropological, psychiatric and psychological factors play an important role in crime-causation, they are so closely associated with the socio-cultural environment that there is an apparent need for an inter-disciplinary approach to the problem of crime and criminals.<sup>1</sup> Since human psychology is incapable of clear-cut division it would be prudent to approach the problem of criminality in an objective manner for the sake of comprehensive understanding. *Prof. Albert Reiss* has tried to identify social relations which are correlative of some of the psychological types. *Hewett* and *Jenking* also made significant contribution to co-relate "personality-type" delinquents with social relations which has provided adequate basis for prevention of crime and treatment of offenders. *Enrico Ferri's* explanation of peculiarities in human behaviour in terms of synthetic product of combination of certain factors provides a useful clue for exploring causation of crime for the purpose of criminological studies.

Social change, which is inevitable in a dynamic society, brings in disharmony, conflict and cultural differentiation. As a result of this, social disorganisation takes place and the traditional patterns of social control mechanisms totally break down. The impact of this change is clearly discernible in the 'personality traits' and psychological variables in criminal behaviour of the offenders. This pragmatic approach to crime causation would certainly provide a sound basis for formulating policies and strategies for effective control of crime and criminals.

It must be stated that under the influence of modern medico-psychological theories of criminology it is being increasingly realised that "crime is itself a form of mental disease, and that its removal as a social evil is a matter more for medicine than for penal law". The Danish Professor *George Sturup* has suggested psychotherapeutical methods for treatment of abnormal offenders which seeks to change the structure of the whole personality of the criminal, wherein lie the main causes of criminality. However, sounding a note of caution and restraint, the Norwegian Professor *Lopez Rey*<sup>2</sup> observed that the modern clinical criminologists are making a mistake by characterising crime as a form of mental disease and identifying criminal behaviour as a social justification for the act.

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1. Sutherland & Cressy : The Principles of Criminology, (6th Ed.) p. 135.

2. IPPF : Studies in Penology (1964) p. 23.

## SOCIOLOGICAL THEORY OF CRIME

Part from the personality of the criminal and the effect of biological, mental and psychological factors on him, it is necessary to consider the impact of various social and environmental conditions within which crimes generate. American criminologists preferred to approach the problem of crime causation objectively. They attributed criminality to social conditions of the criminal. Thus the American view did not support the contention that crimes occur due to personality traits of offenders. The origin of sociological concept of crime can be traced back to the later part of nineteenth century when sociologists undertook intensive study of crime-causation in its economic perspective. They were first in point of time to suggest that the concept of crime has to be extended beyond its strictly legal ambit for the purpose of criminologic studies. The legal approach to causation of crime prescribes a course of conduct under which violations of law are met with penal consequences. But the sociologists go a step further and suggest that crime-causation to a large extent, depends on social interactions—and at times persons violate the law deliberately knowing it fully well that they are liable to face penal consequences for their unlawful act. This phenomenon is more conspicuous in times of political upheavals. Instances are not wanting when eminent statesmen such as Lokmanya Tilak, Mahatma Gandhi, Pandit Nehru, Lal Bahadur Shastri, etc., were forced to violate British laws in the battle for Indian Independence. The tendency on the part of present politicians and trade unionists to resort to pressure tactics such as hunger-strikes, *gheraos*, *dharnas*, self-immolation, etc., are the glaring instances of deliberate law violations by responsible members of society.

The sociological theory of crime asserts that there are persons who do not conform to the established norms and traditions prescribed by law. These persons do not adjust themselves within the framework of normal standards of society and are more or less indifferent to societal norms. For instance, it is well known that the rules of morality or law do not permit anyone to take away the property of others without the latter's consent yet there are persons who do indulge in such activities. The reason for this deviated conduct is to be found in the fact that either these persons have seen their parents or other members of the family stealing or they are encouraged by their seniors to take away things belonging to others. It is in this way that delinquents develop a peculiar habit of stealing and committing thefts. This sufficiently demonstrates that environmental factors such as family relationship may at times contribute to delinquent behaviour.

*Raffaele Garofalo* was perhaps the first legalist to attempt a sociological definition of crime. He designated all those acts as crime which no civilised society can refuse to recognise as criminal and redressible by punishment. He observed that crime is an immoral and harmful act which is



regarded as 'criminal' by public opinion because it is an injury to so much of the moral sense as is represented by one or the other of the elementary altruistic sentiments of probity and pity. Subsequently, *Roscoe Pound*, an eminent American jurist, worked out his theory of 'social-interests' closely related to crime-repression. He founded his theory on a basic assumption that legal phenomenon is nothing but social phenomenon and thus he treated jurisprudence as a science of social engineering.<sup>1</sup> He stressed that the interests in life, liberty, security, religion, social institutions and general progress are predominant considerations with every individual. Sociologically, these interests are clearly conceived by society and any act threatening their realisation calls for repressive measures. Thus these social interests are protected by society and defended by punishments, moral restrains and conventional repressions. Considered from this standpoint, crime has rightly been defined as an action which is antagonistic to solidarity of that group which individual regards as his own.

In the light of the above observation, it is easy to conclude that the sociological view point about the concept of crime is more realistic than its legal definition. It has often been said that we shall have no crime if we had no criminal law but it is a sheer exaltation of law. It is true that with the repeal of law relating to theft, stealing shall no longer remain a crime, nevertheless it would still entail public indignation. Thus "although the name of the behaviour would be changed yet the behaviour and social reaction to it would still remain the same, because the social interests damaged by the behaviour would still remain unchanged". Conversely, although white collar crime is punishable under all legal systems yet those who indulge in false advertising, hoarding, tax evasion, etc., do not lose social status despite their act being anti-social. Thus, sociologists assert that every crime involves three essential elements, namely,

- (i) values that are appreciated by the law-makers who are politically dominant ;
- (ii) conflict of interests in society due to environmental variations ; and
- (iii) use of force and coercive measures by the offenders. 7

Sociologists contend that like any other social behaviour the criminal behaviour also results from certain environmental conditions. Therefore, the variations in crime-rate are due to variations in social organisation under different systems. Enumerating some of the specific factors, *Sutherland* suggests that variations in mobility, culture conflicts, family background, ideologies, population density, employment and distribution of wealth, etc., have a close bearing on crime causation. It may, however, be pointed out that the above list is not exhaustive but only illustrative and these are some of the main conditions which directly influence the crime-rate.

*Dr. Walter Reckless*, through his actuarial approach to the problem of crime-causation observed that chances of the criminal being detected or reported depend, by and large, on his position in the society as determined by his age, sex, race, occupational and social status and residence, etc.

1. Edgar Bodenheimer : Jurisprudence—The Philosophy and Methods of the Law, (1962) pp. 110-111.

## Sociological Theory of Criminal Behaviour

This theory pre-supposes that criminals are a product of society. The impact of sociological factors is so great on persons that they either shun criminality or embrace it, depending on their environment and immediate social conditions. *Prof. Sutherland* made an intensive study of criminals and offered two major explanations for criminal behaviour, namely :—

- (i) the processes operating at the time of the occurrence of crime which he called the dynamic explanation of crime ; and
- (ii) the processes operating in the earlier life-history of the criminal which he termed as the historical or generic explanation of crime.

The dynamic explanation of crime-causation was subsequently favoured by the psychologists, biologists and psychiatrists and in fact formed the basis for subjective approach to crime. It suggests that the cause of criminal behaviour lies in the immediate favourable situation which the criminal finds conducive for the criminal act. For example, offence of embezzlement or misappropriation of the public funds can only be committed by persons who handle large sums of money. Likewise, the offence of theft is often committed in lonely houses which the criminals find locked or unmanned for a number of days. Again, sex offences are common in dwellings where the number of family members are limited and opportunities for privacy and loneliness are easily available.

It is true that personal situations of the criminal do play a vital role in the causation of crime yet these 'situations' alone can hardly be sufficient to motivate a person to commit crime if his previous life experiences are otherwise different. Therefore, a crime usually generates when a person from his past experiences considers a particular situation conducive to it.

As to the historical or generic explanation of criminal behaviour, *Sutherland* drew the following conclusions :

- (1) Criminal behaviour is learnt<sup>1</sup> and not inherited.
- (2) The process of learning criminal behaviour operates through the inter-action of the criminal with other persons and his association with them.
- (3) The greatest influence on the individual is that of his intimate personal group which moulds his conduct in many ways.
- (4) Criminality in human society can best be explained through *Sutherland's* principle of *Differential Association* which presupposes that there are criminal as well as non-criminal associations and these two forces are constantly counteracting. The criminal behaviour results in when the circumstances favourable to violations of law outweigh those which are unfavourable to law-breaking.<sup>2</sup>
- (5) The association with regard to criminal behaviour and anti-criminal behaviour may vary in respect of its duration, priority or intensity.

1. Gabriel de Tarde also subscribed to the view that criminal behaviour is the result of a learning process.

2. *Sutherland and Cressey : The Principles of Criminology (6th Ed.) p. 77.*



- (6) Some criminologists have attempted to explain criminal behaviour in terms of economic needs, acquisitive tendencies of men and urge for gaining social status and seeking pleasure in life. But this argument is untenable inasmuch as it equally-applies to lawful behaviours as well. Thus, theft may be committed by a person for monetary gains but similar results are achieved by earning wages honestly through hard labour.

### Theory of Differential Association

The theory of differential association was propounded by *Edwin H. Sutherland* in 1939. The theory asserts that crime is learnt by association with others. According to him, behavioural learning takes place through personal contacts with other people. This learning, in the context of crime, involves both the techniques for committing the crimes and the attitudes and rationality or justification for their committal. For example, parents of a person may approve, or atleast not disapprove certain types of theft for feeding the hungry or meeting the needs of the poor from certain types of victims such as large stores or wealthy businessman. Thus, the person might learn sympathy for the poor or needy at the same time realising that theft is generally wrong. Such differing and conflicting experiences may lead him to criminality if he is more exposed to the views which are supportive of crime than the views which are against it. Briefly stated, the theory of differential association centers round the theme that a person becomes criminal if there is an excess of influence on him favourable to the violation of the law as compared with the influences which are unfavourable to violation of law.

From the above, it may be said that the essential characteristic of sociological view of crime is that it regards criminality as a consequence of social processes operating in society. In the Indian context, the early Hindu society was essentially credited with the integrated family system where the individual had limited scope for independent existence. The homogeneity of society made the family self-sufficient and therefore the incidence of crime was rare. However, with the advance of science, technology, civilisation and economic progress, the pattern of Indian society has radically changed and the institution of family now stands dissimilated and its disintegration has led to freedom of action so that everyone can adapt himself to the conflicting interests of society. This has resulted into multiplicity of crime in modern times as compared with earlier period.

*Prof. Thorsten Sellin* observes that "the conduct norm of one group of person is a part, which may permit one response to a particular situation while the norm of another group may permit perhaps the very opposite response". For instance, bigamy is an offence punishable under Section 494 of the Indian Penal Code if committed by Hindus, Christians and Parsis of either sex but the provisions of this section have no application in case of Muslim males, who are allowed to marry more than one wife, but it applies to Muslim women. Thus there is always an interchange of action and reaction and persons mostly become criminal by the chain of circumstances.

That apart, certain criminal behaviours are so much diffused in our day-to-day life that we almost forget that they are crimes. The reason is that

such conducts do not carry with them any kind of public indignation. Thus the persons who are penalised for violation of traffic laws are not ridiculed by society. From this standpoint, criminals can at the most be considered as minority-group without public support. This, in other words, means that right thinking members of society do not react sharply to certain behavioural deviations but this certainly does not mean that they have any appreciation for such delinquent conducts.

### Multiple Factor Approach to Crime Causation

Despite repeated attempts on the part of criminologists propounding different views to formulate a singular theoretical explanation for criminal behaviour, no hypothesis could answer the issue satisfactorily. Eventually, the sociologists made use of 'multiple-factor approach' to explain the causation of crime. The supporters of this view believe that crime is a product of a combination of a variety of factors which cannot be narrated in terms of general propositions. This view finds support from the writings of eminent American criminologist *William Healy*, expressing his views on multiple causation theory. *Prof. Healy* observed that it is not one or two factors which turn a man delinquent but it is a combination of many more factors—say eight or ten—which cumulatively influence him to follow criminal conduct. He, however, agreed that all the factors associated with a particular crime may not have equal importance as a cause of that crime. The extent of their influence on crime may be in varying degrees, some exerting greater influence on the crime while the others, the least. But this theory has been vehemently criticised by *Albert Cohen* on the ground that it offers no single explanation which can explain crime-causation. Moreover, it is fallacious to believe that crimes generate only in deplorable surroundings. The greatest shortcoming of the multiple-factor approach to crime according to *Cohen* is that the adherents of this theory confused 'factors' with those of 'causes' of crime.

From the foregoing analysis it is evident that sociologists consider crime as a product of environmental deviations and varying social conditions. The inter-relation between criminality and some of these conditions may be discussed under the following heads :

#### (1) Mobility

The rapid growth of industrialisation and urbanisation in recent years has led to expansion of means of communication, travel facilities and propagation of views through press and platform. Consequently, human interaction has gone beyond intimate associations with increased chances of mobility. Migration of persons to new places where they are strangers offers them better opportunities for crime as the chances of detection are minimised considerably. Mobility, therefore, serves as a potential cause of social disorganisation which may result in deviant behaviour due to lack of family control.

Commenting on the impact of crime-reports appearing in newspapers on criminality, *Barnes & Teeters* observed that it encourages crime and delinquency in two ways. Firstly, those with unstable mind and psychopaths



are easily attracted towards such crimes ; and secondly, with the frequent reporting of crime-news, people begin to lose faith in law and-law-enforcement agencies.) That apart, the deviants learn new techniques of crime through crime-news which are published in newspapers or magazines.<sup>2</sup>

## (2) Culture Conflicts

In a dynamic society social change is an inevitable phenomenon. The impact of modernisation, urbanisation and industrialisation in modern dynamic society may sometimes result in social disorganisation and this may lead to culture conflicts between different sections of society.) The difference may be between old and new values, local and imported values and traditional values and the government imposed values.

The shift of population due to migration or immigration quite often affects the crime-rate of a given place. The culture conflict between inhabitants and immigrants results in deviant behaviour.) In a recent study *Ruth and Cavan* found that Eskimos who were free from the problem of crime until recently, now frequently indulge into deviant behaviour such as, loitering, drunkenness and sex-offences due to their migration to urban areas and social contact with non-Eskimos.

The immigration problem which India faced during Indo-Pak partition days in 1947 and Bangladesh partition in 1971 serves as an interesting illustration of cultural conflicts arising out of social disorganisation. The inflow of Refugees from Sindh and North-West Frontier region in 1947 completely broke down the traditional social structure of Indian society and resulted into enormous increase in crime. The incidence of murder, arson, looting, kidnapping and rioting were necessarily an outcome of socio-cultural variations in immigrants who had developed highly individualistic tendencies due to disruption of their family life and loss of status.

The killing of thousands of people in Sri Lanka since 1986 due to ethnic riots and confrontation between the Liberation Tigers of Tamil Eelam (LTTE) and the militant forces of the government is yet another illustration on this point.) The Tamilians in the country are fighting against discrimination and are demanding for integration with Sinhalese population.<sup>3</sup>

## (3) Family Background

*Sutherland* holds that out of all the social processes, the family background has perhaps the greatest influence on criminal behaviour of the offender.) The reason being that children spend most of their time with their parents and relatives within the family. Children are apt to imbibe criminal

1. Barnes & Teeters : New Horizons of Criminology (3rd Ed.) p. 186.

2. Taft : Criminology (4th Ed.) p. 262.

3. The Government of India, sent Indian Peace Keeping Force (IPKF) in consultation with the Sri Lankan Government to suppress the LTTE guerillas in September 1987 and several persons were killed in the clashes between the LTTE and IPKF till December, 1987. Even after the withdrawal of IPKF from Sri Lanka in 1989, LTTE is continuing its fight against Sri Lankan Government. Late Prime Minister of India Shri Rajiv Gandhi was assassinated by LTTE extremists in Shriperambur on April 30, 1989.

tendencies, if they find their parents or members of the family behaving in a similar manner. The institution of family is expected to cater to the basic needs of the children. Therefore, the child should feel that he enjoys a certain privilege and protection in his family and that he is loved and liked by his parents and members of the family. This feeling of security, warmth and reliance makes children to learn the virtues of love, respect and duty towards others. Thus, it is through the institution of family that the child unconsciously learns to adjust himself to the environment and accepts the values of life such as respect for others, faithfulness, trustworthiness and co-operation through his own life experiences. It, therefore, follows that a child brought up in a broken family is likely to fall an easy prey to criminality. Lack of parental control over children due to death, divorce or desertion of parent or their ignorance or illness may furnish soothing ground for the children to resort to criminal acts. Again, frequent quarrels amongst parents, undue domination of one over the other, step-motherly treatment with children, frequent births in the family, immorality of parents, misery, poverty or unwholesome family atmosphere and the like may also lead to the neglect of child and finding no adequate outlet for his talents, he may tend to become criminal in his life. To add to the above list, unemployment, low income or parent's continued long absence from home for the sake of livelihood are some other causes for child delinquencies.

With revolutionary changes in socio-economic conditions in India, the family patterns have radically changed. Excessive outdoor indulgences of modern Indian house-wife and a general tendency on the part of Indian educated women to be after jobs has disrupted the harmony of Indian family life. This view finds support in *Taft's* expression that home is growing a source of emotional tension'. The role of family has declined and its self-sufficiency jeopardised due to the outdoor interests of its members. The modern wife is no longer confined to her domestic duties as a result of which the internal discipline of the family is wholly shattered. Due to divided loyalties of the parents, the child's personality is over-shadowed by frustration, hatred, jealousy, revengefulness, indifference and dejection and in a fit of bewilderment he throws himself into association with other delinquents. Thus lack of care and affection, non-fulfilment of the basic needs of children and their sad experience in the family lead to their detachment from the family and they easily lend themselves into the criminal world.

After a careful study of the family background of a number of delinquents, *Donald Taft* deduced the following generalisations which are significant from the point of view of crime causation :

- (1) Mobility among criminals is far greater than those of non-criminals. In other words, delinquents change their place more frequently than the law-abiding persons.
- (2) The delinquents usually prefer to stay away from their family, parents and homes.
- (3) The homes of delinquents are often ill-maintained, insanitary and display poor standard of living.
- (4) The family life of most delinquents is usually disrupted and their parents are either dead, separated or divorced.



- (5) Experience has shown that most of the delinquents are subjected to physical punishment by the parents in their childhood. Consequently they hardly show any respect for the members of their family.
- (6) A large percentage of criminals is usually hostile and indifferent towards their brothers and sisters.
- (7) Delinquents are encouraged to follow criminality in their homes in either of the following ways :
- (i) The parents may not themselves be associated with the criminal act but they might deliberately avoid to prevent their children from indulging into criminal acts.
  - (ii) Children may learn criminal patterns through the process of imitation. They begin to learn similar behaviour from their parents or other members of the family.<sup>1</sup>
  - (iii) The parents who have embraced criminality as a way of life like those of professional thieves, pickpockets, prostitutes, etc. often train their children for the vocation. It is, however, true that a reverse process may also operate where criminal parents take all steps to ensure that their children do not follow their foot-steps and keep away from criminality. To take an illustration, it is often seen that in India prostitutes usually take care to keep their children away from the dubious profession so much so that they take all precautions to ensure that their children do not even come to know that their mother is a prostitute. So also, most of the notorious dacoits prefer to dissuade their children from following similar criminal traits and provide them best education for an upright and honest living. This change in their attitude is perhaps due to the impact of education and social transformation in recent years.

Those who denounce the influence of family surroundings on criminality may argue that this hypothesis is incorrect because cases are not wanting when persons brought up in most down-trodden and deplorable family situations have become most useful members of the society and have held prestigious positions. It may be noted that family is only one of the multiple factors affecting criminal behaviour. Therefore, if a child living in degraded family situations finds other surroundings favourable to his upright growth, he adapts himself to those norms and eventually becomes a law abiding citizen. Thus, if other conditions of the child remain conducive to his upright living, the evil influences of degenerated family are held in check by other stronger forces.

#### (4) Political Ideology

It is well known that the Parliamentarians who are law-makers of the country are also politicians. They succeed in mobilising public opinion in the desired way through the media of press and platform and finally enact suitable laws to support their policies. Thus, political ideologies gain

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1. Taft : Criminology (4th Ed.) p. 145.

strength through legislative process thereby directly influencing the criminal patterns in a given society. (The liberalisation of abortion law, imposition or withdrawal of prohibition laws, anti-dowry and untouchability laws are some of the examples to show as to how the concept of criminality changes with the changed ideologies of the politicians and the government in power. With the change in ideologies what was unlawful and illegal till yesterday may become lawful and legal today and *vice versa*.) The law-makers justify these changes for the good of the society keeping in view the changing norms of civilisation and culture. To take a concrete example, the controversial ten-year old Terrorists & Disruptive Activities (Prevention) Act, 1985 which lapsed on May 23, 1995 was not renewed because it was allegedly violative of basic rights. Even the new Criminal Law (Amendment) Bill, 1995 which sought to delete various provisions of TADA that were allegedly misused, failed to evoke a consensus among various political parties. It is, however, a different matter that some quarters still believe that scrapping of TADA would make it difficult for the police to contain terrorism and secessionism.

Again, political changes in a country may give rise to new political offences. The excessive interference of politicians in executive functions of the Government weakens the morale of the administrators as well as the police, with the result there is spontaneous growth in crime-rate.<sup>1)</sup>

With the coalition governments coming into power during 1990's, instability of the government has become a common phenomenon in India. As a result of this, the anti-defection law instead of being an inhibitor of floor-crossing, became an opportunity for elected members to make quick money. This paved way for political corruption which became an acceptable norm for MP's and MLA's who got ready money in toppling or saving the government in power and did not even hesitate to deposit it in bank<sup>2</sup> or keep note bundles under their pillow. As smaller parties emerged, coalition politics became inevitable. Political leaders would tend to maintain their political parties financially sound<sup>3</sup> and at the same time insure themselves and their families against the uncertainties of future. This led to increasing nexus between politicians and organised criminals. This is followed by political bureaucracy-organised crime nexus. Once politicians get involved, they become vulnerable and there is continuous pressure on them to repeat the process.

1. The assassination of Late Smt. Indira Gandhi, the Prime Minister of India on October 31, 1984 at her residence in New Delhi touches the climax of political crime in India. The incidence of violence, arson, riots and looting in the State of Gujarat during February—June, 1985 further illustrates the point that undue interference of political high-ups weakens the public as well as the police morale. The mass killings in Punjab due to extremist activities during the last seven years is yet another illustration which touched its climax with the Akali leader Sant Harcharan Singh Longwal's assassination at Sherpur village of Punjab on August 20, 1985. The Chief Minister of Punjab, Sardar Beant Singh was killed alongwith 12 others in a bomb blast (RDX placed in car) by extremists in the State Secretariat Chandigarh on 31st August, 1985.
2. JMM Bribery case in which Sibn Soren & Suraj Mandal took money to save the Narsimha Rao government from toppling (AIR 1998 SC 2120).
3. The Tahelka Dot Com expose (March 2001) involving President of BJP Bangaru Laxman and Samta Party Chief Jaya Jetley is an illustration on the point.



### (5) Religion and Crime

The changes in religious ideologies also have a direct bearing on the incidence of crime in a particular region. It has been rightly said that morality can best be preserved in a society through the institution of religion. The bond of religion keeps persons within their limits and helps them to keep away from sinful and criminal acts. The declining influence of religion in modern times has tended to leave men free to do as they like without any restraint or fear. Consequently, they do not hesitate to resort to criminality even for petty materialistic gains. Looking to the Indian conditions, things seem to be still worse. Religious places in most parts of India have become dubious centres of vices. Cheating, stealing, exploiting and kidnapping are too common in these places. The so-called champions of the cause of religion, namely, the priests, the *pujaris* and Pandas of these religious places are virtually the plunderers who do not hesitate to ransack the innocent pilgrims. They consider themselves to be the agents of God and are in fact more dangerous than the real criminals. It is, therefore, necessary that public opinion should be mobilised against the superstitions which are deep-rooted in Hindu religion and greater stress be laid on the spiritual aspect of *Dharma* rather than the rituals and formalities insisted upon by the priests. This would help in reducing crimes in pilgrim places in India. It is desired that the government must initiate stringent measures to save these sacred places from becoming the centres of nefarious activities of anti-social elements.

Despite the fact that all religions speak of communal harmony and peaceful co-existence, most wars on this earth are fought in the name of religion. The recent war between Iran and Iraq for over eight years, the wars in Lebanon, and the continuing fight between Catholics and Protestants in Northern Ireland and even terrorist activities in India are being carried out in the name of hidden religious overtones. These divisive forces contribute considerably to the incidence of murder, killing and other anti-social behaviour.<sup>1</sup>

### (6) Economic Conditions

Economic conditions also influence criminality to a considerable extent. Present day industrial progress, economic growth and urbanisation have paralysed the Indian domestic life. The institution of family has disintegrated to such an extent that control of parents over their wards has slackened thus leaving them free to behave as they like. Under the circumstances, those who lack self-control fall an easy prey to criminality. The employment of women and their other outdoor activities have enhanced the opportunities for sex crime. Again crimes such as hoarding, undue profiteering, black-marketing, etc., are essentially an outcome of economic changes. Now-a-days money is the paramount consideration to assess the social status of a person in society. Crimes in higher circles of society can easily be wiped off through money. Unemployment among the youths in

1. The 'Operation Blue Star' in Amritsar in 1984, Bhartiya Janta Party's 'Ekta Yatra' on 26 January 1992 ; Celebration of PAK-DAY in March 23, 1991, The Babri Masjid demolition incident of December 1992 and Vishnu Mahayagna by Vishwa Hindu Parishad in Mathura on Shrikrishna Janmasthanmi day (18 August, 1995) etc. amply demonstrate the role of religion in diffusing criminality.

recent years, is another cause of increase in crime-rate.) If the energies of these young persons are properly channelised, they can surely become useful members of the society.

It has now been generally accepted that there is a strong relationship between criminality and economic or income inequality as also between crime and unemployment. But poverty *per se* is not the sole cause of criminality, it is only a major factor in crime causation. It is the social disorganisation which accounts for criminality among the poorest and not their poverty. Undoubtedly, there is close relationship between unemployment and criminality. Unemployment is most closely associated with property crimes and an increase in the arrest rate of juveniles and youth. Those who are jobless or have less secure employment such as casual and contract workers are more likely to be involved in criminality.

Analysing the impact of economic conditions on criminality, *Prof. Hermann Mannheim* observed that if we leave aside traffic offences, three-fourth of the time and energy of the criminal law administrators of the world shall have to be devoted to economic crimes.<sup>1</sup> Focusing the importance of economic factors in the causation of crime, he pointed out that poverty contributes both directly and indirectly to the commission of crime. However, poverty alone may not be a direct cause of crime because other factors such as frustration, emotional insecurity and non-fulfilment of wants often play a dominant role in giving rise to the criminal tendency.

The Marxist theory has emphasised that all human behaviour is determined by economic factors. Supporting this view, *Fredrick Engels* attributed increase in the incidence of crime in England in mid-eighteenth century to the deplorable economic condition of the workers due to class exploitation. *W.A. Bonger* also adopted the same approach in explaining crime-causation and asserted that a criminal was a product of capitalistic system,<sup>2</sup> which created selfish tendencies. In such a system each person tries to extract maximum from others in return of the minimum from himself. Thus, *Bonger* identifies many evils in the capitalistic system which are responsible for the spread of criminal behaviour. In fact, the theory of Radical Criminology is based on this concept which further explains that crime occurs due to the exploitation of the poor by the rich.

## (7) Ecology of Crime

Ecology is the study of people and institutions in relation to environment. Topographical conditions also affect the incidence of crime in a particular region or locality. After a series of researches *Enrico Ferri*, the eminent Italian criminologist analysed the crime index of his country and concluded that in the same nation the crime-rate varies considerably from one region to another. Some typical crimes are more peculiar to a particular region than other parts of the country. Similar observations were made by criminologists in France, England and U.S.A. which sufficiently established the influence of ecology on crime. It is well known that violation of customs, excise and drug laws are more common in border areas and coastal regions than in plains. Illegal felling of trees and violation of forest laws is an every

1. Hermann Mannheim : Criminal Justice And Social Reconstruction (1958 Ed) p. 82.

2. *Infra*, Chapter VII.



day occurrence in forest regions.

In India the impact of ecology on crime is apparently to be seen in the dacoit-infested forest regions and ravines of Rajasthan, Madhya Pradesh and Uttar Pradesh where opportunities for escape and detection are plenty. To take another example, the pilgrim places of India are the breeding ground for all sorts of criminal activities such as cheating, stealing, exploiting, etc. The cheats operating in the guise of fortune-tellers and Sadhus are often the first rate criminals who carry on their dubious activities right under the nose of the custodians of law in these so called holy places.

The proponents of ecological theory attribute social disorganisation as the main cause of criminality. They, therefore, believe that treating or punishing the individual offenders would do little to alleviate the problem and the solution is to be found in making efforts to stabilise the social organisation and promoting community feeling, particularly among youths. As *Durkheim* rightly put it, "the overall disorder and disorganisation, social and personal, shifts behaviour in the direction of crime".<sup>1</sup>

The regional comparisons of crime-rate in different parts of the country sufficiently indicate that certain crimes are peculiar to a particular location. It can, therefore, be inferred that ecology of crime consists in the study of influences such as neighbourhood, population, topographical factors, etc., on criminals considered from the point of view of location.<sup>2</sup> Commenting on this point, *Donald Taft* observed that "ecology of crime may be studied in terms of location of criminal or residences of delinquents or some supposed influence upon crime which has distribution in terms of space and topography". He further observed that criminals are often mobile and there seems to be a casual relationship between location of delinquency and the criminal. It may, however, be pointed out that ecology of crime need not be confused with the proximity of crime and social conditions. The predominant consideration in the ecology of crime is topographical conditions of different regions and their impact on causation of crimes peculiar to those places. Thus, ecology is undoubtedly one of the multiple factors of crime causation.

### (8) Influence of Media

The importance of mass media in influencing the human mind has been repeatedly emphasised by some experts. Experience has shown that television and films have the maximum impact on the viewers due to combined audio-visual impact. Most of serials or films shown on television or cinema halls depict scenes of violence which adversely affect the viewers, particularly the young boys and girls who often tend to imitate the same in their real life situations. The rising incidence of juvenile delinquency is essentially the result of evil effect of violence and vulgarity and undesirable sex exposures depicted in movies or television. Likewise, pornographic literature also has an unwholesome influence on the impressionable minds of the youth which generates criminality among them.

Most criminologists believe that films and television are major contributors to violent behaviour. A survey conducted by the Broadcasting Group of the House of Lords indicated that exposure to media violence was

1. Durkheim Emile : *The Division of Labour in Society* (Illinois, 1933) p. 82.  
2. Moris : *The Criminal Areas* (1957 Ed.) p. 1.

closely linked with aggressive behaviour. But *Hagell* and *Newbury* opposed the view that there was a link between violent media images and criminality, after finding that persistent offenders watch films or television far less than non-criminals. *Gillin* has expressed doubt about any real link between media violence and criminality. According to him films, T.V. and other media teaches methods of violence to those who are already susceptible to it but it does not go further than that.<sup>1</sup>

Again, the role of media in helping the mushroom growth of fake and fictitious educational institutions which are duping large number of degree-seekers, needs a particular mention in this context. The *modus operandi* of these institutions is simple; they splash full page advertisements in leading newspapers, collect huge sums from franchises and fat course-fee from students and make a huge profit leaving students to fend for themselves. This is particularly true with the rotten computer training institutes which have mushroomed all over the country under different impressive names. These 'fly-by-night' computer institutes are taking students for a ride through attractive advertisements and on-line contracts. Therefore, there is urgent need for framing a law to curb malpractices by these institutes through misuse of media and computer net-work.<sup>2</sup> To take a concrete example, Murtaza Mithani owned Wintech Computers. An Information Technology Education company was launched with a splash in 1998-99. The company reportedly collected Rs. 10 to 20 lakhs from each franchisee. Similarly it charged a fee ranging from 15 to 30 thousands for different courses. Now the promoters of Wintech Computers are not traceable, leaving thousands of students in a lurch. There is no response from company's headquarters in Delhi. Similar is the case of a Mumbai based Zap Infotech company.

Thus, it would be seen that in recent years the media has a powerful effect on public perceptions of the dangers posed by particular events, actions or behaviours. The emotive power of the media may, however, sometimes lead to illogical and ill-conceived conclusions. At times we find that crime depiction in the media is deliberately distorted to suppress reality. Again there may be occasions when an act committed by an influential person or a politician may not be given coverage or condemnation despite being patently criminal or anti-social.

### Crimes in Urban and Rural Areas

Ecological aspects of crime can best be demonstrated by an analysis of a variety of crimes operating in urban as well as rural areas. Many crimes which are common in urban areas are unknown to rural setting. The concentration of industry and commercial activities in urban region has given rise to the problems of immigration, mobility of population and scarcity of residential accommodation. The availability of quick means of transport in cities offers better opportunities for delinquents to escape detection and arrest. The incidence of juvenile delinquency, shop lifting, petty thefts and sexual offences are more common in slum areas and

1. Gillin : Censorship and Obscenity, (1978) p. 76.

2. The All India Council for Technical Education is seized of the matter and a comprehensive law on the subject is likely to be enacted shortly.



poverty-stricken homes. That apart, the recurrence of white collar crimes, bank-offences, frauds, embezzlement, racketeering and the like are mostly confined to urban regions. Conversely, some crimes are exclusively confined to rural areas and they rarely occur in cities. Thus the thefts of crops and cattle, arson and trespass are predominantly the offences of rural nature. Commenting on the incidence of crimes in urban and rural regions, *Donald Taft* opines that the number of crimes committed in rural areas are far fewer than those committed in urban cities because of the greater homogeneity of rural population, lesser mobility and absence of adequate opportunities for the criminal to escape. Greater mobility due to migration and immigration of labour, overcrowding in urban dwellings, the absence of effective family or community control and lack of constructive influences are the main causes for multiplicity of crime in urban regions.

The rural migrants in new cities are unable to easily adjust to the impersonal heterogeneity of urban life. They are no longer controlled by the traditional norms and family loyalties. They become restless persons without associates. In the words of *Durkheim*, they become small particles in that world of "disorganised dust". Thus heterogeneity of urban life destroys their earlier congenial social relationships, creating a social vacuum which proves to be a fertile ground for criminality. Under such conditions, violence and crime proliferate.

Again, the inhabitants of rural areas are by nature simple and law-abiding as compared with their urban counterparts, probably because of illiteracy and their modest living. Moreover, limited contact with outside world keeps them unaware of the technicalities of criminal life. It is generally believed that crimes relating to property are predominantly committed in urban areas while those against person are more common in rural regions. However, this hypothesis does not seem to be wholly correct. Property crimes are as common in villages as in towns. Likewise, crimes relating to person are as rampant in cities and towns as in rural areas.

### **Neighbourhood influences**

Neighbourhood influences also have much to do with the nature of crimes in a particular locality. Thus, thickly inhabited areas, town and cities offer frequent opportunities for sex offences and crimes relating to theft bootlegging, burglary, kidnapping, cheating, deceit and so on. Cases of pick-pocketing are common in railway stations, bus stops and other halt places. Thefts of footwear are too common in temples and worship places in India.

An ecological study of prisons further reveals that certain types of crime are peculiar to the prison-life. For example, homo-sexuality is common among the prisoners because of their inability to resist sexual impulse due to deprivation of family life. That apart, the convicts too often indulge in mutual fights and quarrels in an attempt to show their muscle power and establish superiority over other prisoners in regard to their skill in criminality. Violent criminals quite often resort to destruction of prison property and offend prison authorities on petty issues.

Another significant feature of these delinquent areas is the location of certain anti-social institutions in the neighbourhood. These include

prostitution houses, gambling dens, brothels and similar other dubious institutions. These areas of vices are delinquency-ridden and offer a fertile ground for organised criminals. The inhabitants of nearby locality are easily influenced by these vicious activities and thus lend themselves into the life of criminality.

More recently, there has been a tendency to correlate certain places of recreation with the ecology of crime. The cinema theatres, swimming pools, sport-grounds, and race-courses generally offer a favourable atmosphere for delinquencies. But this is rather an oversimplification of facts. As a matter of fact, the frequency of crime in these places has little to do with their location. In fact it is the environmental and not the ecological influence which generates crime in these places. Moreover, there are quite a large number of law-abiding members of the society who do not become criminals even after coming into contact with delinquents in these places of recreation and entertainment.

### Conclusion

An analysis of the foregoing socio-cultural and economic explanation of crime suggests that no single theory can offer an adequate explanation for crime causation. The reason being that these theories are more or less of a general type and cannot explain particular situation of delinquency. It, therefore, follows that delinquent behaviour is an outcome of the combination of a variety of factors which create situation conducive to criminality. With the widening of social interaction due to the impact of industrialisation, urbanisation, modernisation and democratisation, there is greater need for community control because the agency of law alone is relatively weak to repress the rising trend in criminality in modern times.

It must, however, be emphasised that crime is an index of social pathology. Crime and violence reoccur when society is disorganised, floundering and beset with social and economic problems. Social disorganisation is reflected by the conflict in social values which interrupts harmony of the society. Therefore, crime must be understood on the basis of human behaviour and the social and emotional needs of the person. The problem of prevention of crime should be dealt with in a broader socio-economic perspective so as to meet the emotional needs of the individual as a member of the community. Since crime is a social fact and human act, the process of dealing with a criminal does not come to an end after the offence has been legally defined and penalty imposed on the offender in accordance with law. It is also essential to understand crime as a social and individual phenomenon and the need to prevent its re-occurrence or repetition by adopting an attitude conducive to the resocialisation and reformation of the offender.

India being a land of diversity, people of different castes, creeds and communities live together. The divergence in norms, customs, taboos, traditions, values and moral standards of the people belonging to different groups often leads to frequent clashes which provide fertile ground for the incidence of crime. It may further be added that with the growing complexities of modern life, many anti-social acts which were hitherto considered to be immoral and offensive and received public condemnation



have now almost become a part or parcel of everyday life. Bribery and corruption are just a few examples of this change in attitude of the people. Consequently, the difference between criminals and non-criminals has drastically narrowed down. That is to say, both criminals and non-criminals indulge in similar activities, the only difference between them being that the former are caught in legal net because of their lack of skill and vigil while the latter go scot-free being shrewd enough to manipulate their non-detection and escape. Thus, it is evident that the attitude of the society towards criminality has changed with the changing patterns of Indian society.

Commenting on the magnitude of corruption in India *Bertrand de speville*, the International Anti-corruption expert and an expert consultant to the State Government of Andhra Pradesh, has observed that it is either need or greed which is responsible for making an individual a corrupt person and, therefore, it is not correct to think that rich people are less corrupt and poor people are more. Greed is the motivation for corruption for anyone whether rich or poor. He was startled to find that there was corruption in judiciary and police department in Andhra Pradesh.<sup>1</sup>

India today is faced with manifold problems of socio-economic and political dimensions. There has been unprecedented increase in crime and incidents of violence, rape, dacoities, financial scams etc. have made the life and property of the people insecure. Gangsters are extorting money from people at gun-point and even do not hesitate to kill them if they do not yield to their illegal demand. Young women, girls and even children are being raped or sexually abused mercilessly. Corruption is rampant in almost all walks of life and there has been criminalisation of politics to such an extent that people have begun to shun politicians. The political leaders and the so called people's representatives are guided by one single philosophy, "*means do not matter, go and get what you want and use all available means to get it*". Thus Indian polity is witnessing a switchover from "spiritualisation to criminalisation".<sup>2</sup> In short, India is heading fast towards degeneration if the current wave of materialism, opportunism and vandalism is not timely checked. In order to overcome this deterioration in Indian society, there is need to restore the cherished values of honesty, sincerity and integrity which have lost their credence in the present Indian context where 'expediency' predominates all virtues of human life.

1. Times of India (Delhi) dated April 28, 2001.

2. To quote the latest illustration, Pappu Yadav a RJD Member of Parliament who was facing trial for murdering C.P.M. legislator Ajit Sarkar in 1998 was twice sent back to jail by the Supreme Court by refusing the bail but was given fresh bail by Patna High Court to file nomination papers from Madhepura Lok Sabha seat from Bihar vacated by Railway Minister Lalu Prasad Yadav. Deciding the appeal against grant of bail to Pappu Yadav, the Supreme Court on 24th September, 2004 asked as to why his bail should not be cancelled as it was too premature to comment whether prosecution had failed to establish charges against a bail seeker when he is on trial. The trial Court alone can adjudicate whether charges are proved or not (Times News Network, Sept. 24, 2004).